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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 130

INDIANAPOLIS BREWING COMPANY, INC.,
APPELLANT,

vs.

THE LIQUOR CONTROL COMMISSION OF THE
STATE OF MICHIGAN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF MICHIGAN

FILED JUNE 18, 1938.

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[fol. 1]

IN UNITED STATES DISTRICT COURT, FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In Equity. No. —

INDIANAPOLIS BREWING COMPANY, INC., an Indiana Corporation, Plaintiff,

vs.

THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN; Edward W. McFarland, Hale G. Knight, and Verold F. Gormely, Individually and as Members of the Liquor Control Commission of the State of Michigan; Frank Murphy and Leon D. Case, Individually and as Members Ex-Officio of the Liquor Control Commission of the State of Michigan; Raymond W. Starr, Individually and as Attorney General of the State of Michigan, Defendants

BILL OF COMPLAINT—Filed December 10, 1937

To the Honorable Judges of the District Court of the United States for the Eastern District of Michigan, Southern Division:

The plaintiff, Indianapolis Brewing Company, Inc., complains of the defendants above named, and each of them in their several capacities above set forth, and alleges and shows unto the Court the following facts:

Clause One

Plaintiff, Indianapolis Brewing Company, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, having its principal office and place of business in the City of Indianapolis, County of Marion, in said State, is a citizen and resident of said State, and is not a citizen or resident of the State of Michigan, the Eastern District of Michigan, or the Southern Division of [fol. 2] said Eastern District.

Clause Two

A. The defendant, the Liquor Control Commission of the State of Michigan, hereinafter sometimes referred to as the "Commission", is the duly organized and existing authority

created by Act No. 8, of the Public Acts of the Extra Session of 1933 of the State of Michigan, as amended by Act No. 241 of the Public Acts of 1935, and Act No. 281 of the Public Acts of 1937 of said State, all of which acts are hereinafter sometimes referred to as the "Liquor Control Acts", and by said laws and statutes is vested with the sole right, power and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within the said State of Michigan, and is charged with the enforcement and administration of said laws and statutes. Said commission, whose members are those persons hereinafter mentioned, is a citizen and resident of the City of Lansing, County of Ingham, State of Michigan, and is a citizen and resident of the Eastern District of Michigan, Southern Division thereof.

B. The defendant, Edward W. McFarland, is now and since on or about the 10th day of March, 1937, has been a duly appointed, qualified and acting member of said Commission, and the Chairman thereof, and is to hold such office for approximately two years from said date; said defendant McFarland is a citizen and resident of the City of Detroit, County of Wayne, State of Michigan, and is a citizen and resident of the Eastern District of Michigan, Southern Division thereof.

C. The defendant, Hale G. Knight, is now and since about the 15th day of March, 1937, has been a duly appointed, qualified and acting member of said Commission and is to hold such office until the 15th day of December, 1937; said [fol. 3] defendant Knight is a citizen and resident of the above mentioned City of Detroit, in said Eastern District of Michigan, Southern Division thereof.

D. The defendant, Verold F. Gormely, is now and since about the 1st day of March, 1937, has been a duly appointed, qualified and acting member of said Commission and is to hold such office until approximately three years from said date; said defendant Gormely is a citizen and resident of the City of Lansing, County of Ingham, State of Michigan, and is a citizen and resident of the Eastern District of Michigan, Southern Division thereof.

E. The defendant, Frank Murphy, is the duly elected qualified and acting Governor of the State of Michigan, and is the executive head of the government of the State of Michigan, and possesses, and is charged with and exercises,

by virtue of the various laws of said State, a dominating control over the administration and enforcement of such laws, and particularly of those certain laws and statutes of said State above referred to, in paragraph "A" hereof, as the Liquor Control Acts, the first of which was approved and has been in force and effect since the day of December 15, 1933, and the subsequent amendments thereto, all of which are more particularly referred to hereinafter. Said defendant, Frank Murphy, by virtue of his office of Governor of the State of Michigan, is, under the provision of said Liquor Control Acts, a member ex-officio of the said Liquor Control Commission and as such possesses and is charged with certain additional powers and duties in connection with the enforcement and administration of said Liquor Control Acts. Said defendant is a citizen and resident of the State of Michigan, in the Eastern District of said State of Michigan, Southern Division thereof.

F. The defendant, Leon D. Case, is the duly elected, qualified and acting Secretary of State of the State of Michi- [fol. 4] gan, and by virtue of his office as Secretary of State, is, under the provisions of said Liquor Control Acts, a member ex-officio of said Liquor Control Commission, and as such possesses and is charged with certain powers and duties in connection with the enforcement and administration of said Liquor Control Acts. Said defendant, Case, is a citizen and resident of Watervliet, County of Berrien, State of Michigan, and is a citizen and resident of the Western District of Michigan, Southern Division thereof.

G. The defendant, Raymond W. Starr, is the duly elected, qualified and acting Attorney General of the State of Michigan, and is the principal legal officer of said State, and is charged with the enforcement of the laws of said State, particularly said Liquor Control Acts and certain acts related thereto, hereinafter more particularly referred to. Said defendant is the legal adviser and counsellor of the Liquor Control Commission and the members thereof, of the Governor and Secretary of State. Said defendant, Starr, is a citizen and resident of the State of Michigan, Western District of said State of Michigan, and the Southern Division of said Western District.

Clause Three

A. Said plaintiff is, and prior to and since about the 1st day of January, 1935, has been, duly authorized to conduct

and has engaged in the business of the manufacture and sale of alcoholic malt beverages, and other lawful lines of business allied therewith in the State of Indiana. Plaintiff now owns and operates, and since said date has owned and operated, a plant in said State of Indiana wherein it manufactures and has manufactured alcoholic malt beverages, which it has sold and is selling in many parts of the United States where such sales are lawful, including the State of Michigan, in which state its sales are made to persons duly licensed by the above mentioned Liquor Control Commis- [fol. 5] sion of the State of Michigan, and in accordance with and in pursuance of a certain Seller's Beer License No. 14 issued to it by said Commission, which said license is at present still owned and held by plaintiff, a copy of which is attached hereto and marked Exhibit "A", and made a part hereof.

B. Each and all said sales have been consummated on written, telegraphic, or telephonic orders from plaintiff's customers in said State to plaintiff in the State of Indiana. Such orders have been in all cases accepted by plaintiff in said State of Indiana, and call for delivery either under direction of plaintiff or its customer at said customer's place of business, or other designated destination, in the State of Michigan. The title to said beer and malt beverages so purchased, and each specific purchase, passes to the customers from plaintiff, upon receipt of same by said customer at its place of business or designated destination in the said State of Michigan. Plaintiff has at all times in the conduct of its business complied with the laws of the United States, of the State of Indiana, and of the State of Michigan pertaining thereto.

C. In the conduct of its business as hereinbefore stated, plaintiff has during the past several years sold large quantities of its products to duly licensed wholesalers and distributors in the State of Michigan. The approximate value of the plaintiff's products so sold is as follows:

For the year 1935	$44,654.85
For the year 1936	44,838.91
For the year 1937 (10 months)	37,995.59
Total	$127,489.35

Clause Four

The jurisdiction of this Court is based upon the following:

[fol. 6] This is a suit of a civil nature in equity, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3000.), and is wholly between citizens of different states and can be fully determined as between them.

Clause Five

The jurisdiction of this Court is also invoked because and by reason of certain Federal questions involved, in this, to wit: The validity of said Liquor Control Acts, particularly section 40 of Act No. 281 of Public Acts of 1937, and the regulations issued and about to be issued thereunder, are put in question on the grounds that they violate, and at the time of the enactment and promulgation thereof, did violate, or will violate, the provisions of Section Eight (8) of Article One (I) (being what is commonly known as the Commerce Clause) of the Constitution of the United States; the Fourteenth (14th) Amendment to the Constitution of the United States; and sections 41, 42, and 43, Title 8 of the United States Code, being those provisions of the certain statutes of the United States known as the civil and property rights statutes; Section Ten (10) of Article I, and Section Two (2) of Article IV of the Constitution of the United States.

Clause Six

A. There is involved in this controversy the right of the plaintiff to sell, transport and deliver in interstate commerce to purchasers in the State of Michigan, beer and other alcoholic malt beverages manufactured by it in the State of Indiana for sale in the several United States including said State of Michigan, free from the unlawfully discriminatory provisions and onerous burdens imposed by said Liquor Control Acts. The right of plaintiff to sell and [fol. 7] to continue to sell their products in interstate commerce and to transport and import and continue to transport and import the same into the State of Michigan for sale and delivery to purchasers in said State of Michigan free from such unlawful burdens and discriminatory pro-

visions of said Acts is of a value greatly in excess of the sum of Ten Thousand ($10,000) Dollars; the value of the product of plaintiff which it does now and will annually sell in interstate commerce and transport into the State of Michigan free from such unlawful burdens and discriminatory provisions is greatly in excess of the sum of Ten Thousand ($10,000) Dollars; the value of the beer and malt beverages which plaintiff has heretofore manufactured in the State of Indiana and has transported into and sold in the State of Michigan is greatly in excess of the sum of One Hundred Thousand ($100,000) Dollars. Plaintiff's right to have defendants restrained from enforcing said Liquor Control Acts against plaintiff is of a value greatly in excess of Ten Thousand ($10,000) Dollars, and the value of plaintiff's business and good will in the State of Michigan, which will be destroyed if the enforcement of said Acts against plaintiff is not restrained and enjoined, is vastly in excess of the sum of Ten Thousand ($10,000) Dollars.

B. Plaintiff, by reason of the quality of its product and by great expenditure of money, by advertising, solicitation and through other means, has, over a period of the past three years, developed and enjoys a large demand and sale for its beers and alcoholic malt beverage, and a valuable good will and a valuable sales and distribution system in the State of Michigan, and plaintiff has contracts with numerous employes and others who are engaged in the manufacture of its products in the State of Indiana, and in the transportation, distribution, and sale of same in the State of Michigan. There exists in said State of Michigan [fol. 8] a large demand on the part of numerous consumers, retail dealers, and wholesale dealers for the products manufactured and sold by plaintiff, and but for the matters and things hereinafter complained of, said plaintiff could and would continue to market and sell in the State of Michigan as it has heretofore done a considerable portion of its products and of the total amount of beer and other alcoholic malt beverages sold in said State.

Clause Seven

A. The Liquor Control Act of the State of Michigan was originally enacted as Act No. 8 of the Public Acts of the Extra Session of 1933 of the State of Michigan, in pursuance of an amendment to the Constitution of 1908 of said

State. Said amendment, duly adopted in November 1932, and being section 11 of Article XVI of said Constitution is in words and figures as follows:

"Sec. 11. The legislature may by law establish a liquor control commission, who, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof; and the legislature may also provide for an excise tax on such sales: Providing, however, that neither the legislature nor such commission may authorize the manufacture or sale of alcoholic beverages in any county in which the electors thereof, by a majority vote, shall prohibit the same."

B. The said Act No. 8 of the Public Acts of the Extra Session of 1933 is entitled as follows:

"An act to create a liquor control commission for the control of the alcoholic beverage traffic within the state of Michigan, and to prescribe its powers, duties and limita- [fol. 9] tions; to provide for the control of the alcoholic liquor traffic within the state of Michigan and the establishment of state liquor stores, to provide for the licensing and taxation thereof; and the disposition of the moneys received under this act; to provide for the enforcement and to prescribe penalties for violations of this act: to provide for the confiscation and disposition of property seized under the provisions of this act; to provide a referendum in certain cases; and to repeal certain acts and parts of acts, general, local and special, and certain ordinances and parts of ordinances."

C. The title and certain sections, including section 40, of said Act No. 8 were amended subsequently by Act No. 281 of the Public Acts of 1937 of the State of Michigan. Said amended title is as follows:

"An act to create a liquor control commission for the control of the alcoholic beverage traffic within the state of Michigan, and to prescribe its powers, duties and limitations; to provide for the control of the alcoholic liquor traffic within the state of Michigan and the establishment of state liquor stores; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges thereto; to provide for the licensing

and taxation thereof, and the disposition of the moneys received under this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for the confiscation and disposition of property seized under the provisions of this act; to provide a refer- [fol. 10] endum in certain cases; and to repeal certain acts and parts of acts, general, local and special, and certain ordinances and parts of ordinances."

and said amended section 40 reads as follows:

"Sec. 40. Beer; taxation and discrimination. There shall be levied and collected by the commission on all beer manufactured and/or sold in this state a tax at the rate of one dollar and twenty-five cents per barrel if sold in bulk, and in like ratio if sold in smaller quantities, the payment of which shall be evidenced by excise tax beer stamps, caps, lids, or crowns as prescribed by the Michigan liquor control commission, affixed to the barrel, keg, case, or other container, as the case may be by the brewer if manufactured in this state, unless otherwise provided by the commission with respect to beer manufactured within this state, or by the wholesaler or the person from whom purchased if manufactured outside this state, whichever shall be designated by the commission, before sale thereof within this state by said wholesaler: Provided, however, That the tax imposed by this act upon beer manufactured in or imported into this state shall be rebated to such manufacturer or wholesaler upon satisfactory proof being furnished to the commission by affidavit or otherwise, as the commission may determine, that such beer was shipped out of the state for sale and consumption outside the state of Michigan.

"For purposes of taxation a barrel shall be construed to contain thirty-one gallons.

"Any manufacturer duly licensed as aforesaid and who [fol. 11] has paid said license fee shall be exempt from payment of any tax imposed under the provisions of act number one hundred of the public acts of nineteen hundred thirty-one or amendments thereto, commonly known as the malt tax act, for all malt products taxed by said act used in its manufacturing process.

"The commission shall forthwith adopt a regulation designating the states, the laws, or the rules or regulations of which are found to require a licensed wholesaler of beer

therein to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state; or which deny the issuance of a license authorizing the importation of beer to any duly licensed wholesaler of beer therein who may make application for such license; or which prohibit licensed wholesalers of beer therein from possessing or selling beer purchased in this state, unless the one from whom purchased has secured a license and paid a fee therein, when such seller neither transports the beer into said state nor sells the same therein; or which impose any higher taxes or inspection fees upon beer manufactured in this state when transporting into or sold therein, than is imposed upon beer manufactured and sold within said state, the regulation adopted shall prohibit all licensees from purchasing, receiving, possessing, or selling any beer manufactured in any state therein designated, said regulation to become effective ninety days after its adoption. Any licensee or person adversely affected shall be entitled to review by certiorari to the proper court the question as to whether the commission has acted illegally or in excess [fol. 12] of authority in making its finding with respect to any state."

D. Section 21 of Article V of the Constitution of 1908 of the State of Michigan pertaining to the enactment and validity of statutes provides in part as follows:

"No law shall embrace more than one object, which shall be expressed in its title."

E. Section 16 of Article II of the Constitution of 1908 of the State of Michigan, provides in part as follows:

"No person shall * * * be deprived of life, liberty or property, without due process of law."

Clause Eight

A. Purporting to act under and in pursuance of the authority of said Liquor Control Acts, and particularly section 40, of Act No. 281, of the Public Acts of 1937, those defendants, who are members of the Commission, assuming to act as The Liquor Control Commission of the State of Michigan, have determined that certain of the laws, rules and regulations in force in the State of Indiana are discriminatory laws as defined by said section 40, and said

defendants are threatening to and are forthwith about to prepare and adopt a regulation designating the said State of Indiana to be a state whose laws discriminate against the State of Michigan within the meaning of said section 40, and unless this Court lends its aid, said defendants will forthwith adopt such regulation prohibiting the purchasing, receiving, possessing, or selling of any beer manufactured in the State of Indiana, including plaintiff's products. In particular the laws, rules and regulations of Indiana above referred to are Chapter 226, Acts of 1935 as amended by Chapter 197, Acts of 1937, and rules and regulations made in pursuance thereof, all of which are herein incorporated [fol. 13] by reference as though herein set out in full.

B. Said defendants assuming to act as the Liquor Control Commission and under the supposed authority of said section 40 are about to enforce and administer the provisions of said section by forthwith adopting the regulation hereinabove mentioned; and unless restrained by this Court will forthwith adopt such regulation and will immediately notify all of its licensees, including plaintiff's customers, that ninety days subsequent to the adoption of said regulation, it will be unlawful to purchase, receive, possess, or sell any beer manufactured in the State of Indiana, including therein the products of plaintiff.

C. It is the purpose, intent and threat of the said defendants, assuming to act as and for the Liquor Control Commission, their agents, representatives, and subordinates, to enforce against the plaintiff, its agents, servants, and customers, the provisions of said section 40 and to prohibit the purchase, receipt, possession, and sale of plaintiff's product upon pain of various penalties, fines, imprisonment, and various forfeitures and seizures of property of plaintiff and its customers, including the cancel-ation of licenses issued by said Commission, as provided for by the laws of the State of Michigan, particularly the said Liquor Control Acts and Act No. 389 of the Public Acts of 1925 of the State of Michigan, as amended (sections 8309, et seq., Compiled Laws of 1929), and the rules and regulations of said Commission, and thus involve the plaintiff, its officers, agents, servants, and customers in numerous suits and threaten it with the disorganization and destruction, by frightening, intimidating, and threatening its customers in this State, of its business, the loss of its customers, and the depreciation

and destruction of its good will and property, all to the irreparable damage of the plaintiff, which said damage would be incapable of admeasurement and adjudication in an action at law.

[fol. 14] D. The threatened action of the Commission has already caused and will continue to cause the disorganization and destruction of plaintiff's business in this State, for the reason that its customers are now refusing and will continue to refuse to purchase its product for fear of the fines, penalties and forfeitures to which they may be subjected on account of such allegedly unlawful acts; and the crystalization of such threats into a regulation will serve to greatly accentuate the fear of plaintiff's customers to purchase its product, and will result in the total destruction of plaintiff's trade. The value of the business of plaintiff, its good will and profits th[illegible] already destroyed, and which will continue to be destroyed by the threats and acts of the defendants are speculative and incapable of ascertainment.

Clause Nine

There are numerous other states in the United States, including Illinois, Maryland, Kentucky, Massachusetts and Missouri which have not been designated by said Commission as being discriminatory within the meaning of said section 40, nor does said Commission have any intent to so designate them. In these said states there are numerous persons and corporations engaged in the manufacture of alcoholic malt beverages and beer who sell their products throughout the United States wherever such sale is lawful, including the State of Michigan. Said manufacturers will be free to continue to import and sell within the State of Michigan such products which have been and are now in competition with those manufactured by plaintiff and sold by it in said State of Michigan. The State of Indiana is the only state which defendants threaten to and are forthwith about to designate as discriminatory within said section 40, and upon information and belief, said state is [fol. 15] the only state which said defendants will and intend to so designate.

Clause Ten

The plaintiff owns and operates a brewery or place of manufacture in the State of Indiana, and now sells and de-

sires to and will continue to sell its products to customers in this State, and, in order to do so, to negotiate in interstate commerce the sale of same, and to transport or cause to be transported the same in interstate commerce. The beer and alcoholic malt beverages manufactured, marketed or handled by plaintiff are such beverages as are referred to in the Liquor Control Acts, particularly the aforementioned section 40, as "beer," and are such beverages, the manufacture and sale of which are made legal and authorized and sought to be controlled by said Acts.

Clause Eleven

Said Liquor Control Acts, particularly said section 40 thereof, are in violation of the Constitution of the United States and therefore invalid and void for the following reasons:

A. Said Liquor Control Acts, particularly said section 40, violate Section 8 of Article I of the Constitution of the United States, which, among other things, provides: "The Congress shall have the power * * * to regulate commerce * * * among the several states * * *," because same constitute an attempt by the State of Michigan to regulate and prohibit interstate commerce and constitutes an undue, and unlawful burden and restriction upon interstate commerce and because the State of Michigan has, by said Liquor Control Acts usurped the power of the Federal Congress over interstate commerce, and because said Liquor Control Acts are not uniform in their operation upon interstate commerce, and because said Liquor Control Acts provide that the importation into or purchase, receipt, possession or sale in Michigan of beer manufactured in Indiana shall be prohibited, while the importa-
[fol. 16] tion into, purchase, receipt, possession and sale in Michigan of beer manufactured in other States, such as Illinois, Kentucky, Maryland, Massachusetts and Missouri is and shall be permitted by said Liquor Control Acts, and because said Liquor Control Acts arbitrarily make classifications without any reasonable or justifiable basis therefor, as herein set out, and because said Liquor Control Acts are an unreasonable exercise of the police power, since said Liquor Control Acts are not designed to promote any purpose of or to protect public health, morals, welfare or safety. The Twenty-First Amendment to the

Constitution of the United States, which, among other things, provides: "The transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof is hereby prohibited," was intended only to protect those states which prohibit or restrict the manufacture, sale, use and possession of intoxicating liquors, and was not intended to take from the Federal Congress jurisdiction over interstate commerce in intoxicating liquors between such states as have by their laws made intoxicating liquor a lawful commodity.

B. Said Liquor Control Acts violate Section 10 of Article I of the Constitution of the United States, which, among other things, provides: "No State shall * * * pass any *ex post facto* law or law impairing the obligation of contracts," in that said Liquor Control Acts make the possession of alcoholic liquors lawfully acquired and possessed unlawful and are retroactive in their operation upon such alcoholic liquors, and in that said Liquor Control Acts impair the obligation of plaintiff's contracts with its employes, agents and customers respecting the importation into and sale of plaintiff's products in the State of Michigan, since said Liquor Control Acts render performance [fol. 17] of such contracts as applied to the State of Michigan illegal. Said Liquor Control Acts also impair the obligation of plaintiff's contract with the Liquor Control Commission of the State of Michigan, by virtue of which contract plaintiff is authorized to import into and sell in the State of Michigan its products, and to continue to do so. Said Liquor Control Acts also impair the obligations of the contracts between plaintiff's customers in the State of Michigan and the said Commission, by virtue of which contracts said customers are authorized to import, receive, possess and sell plaintiff's products in this State, and to continue to do so.

C. Said Liquor Control Acts violate Section 2 of Article IV of the Constitution of the United States, which, among other things, provides: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," because said Liquor Control Acts and their operation deny to this plaintiff, as a citizen and resident of the State of Indiana the privileges and immunities

which are enjoyed in the State of Michigan by citizens of other States, such as the States of Illinois, Kentucky, Maryland, Massachusetts and Missouri, and because said Liquor Control Acts thereby constitute legislation which discriminates against plaintiff, in violation of its constitutional rights, and because said Liquor Control Acts create and constitute classes and distinctions without any reasonable or justifiable basis therefor, as herein set out, and because the purpose of said Liquor Control Acts is not to promote any purpose of public health, morals, welfare or safety in the State of Michigan, but is designed and calculated to retaliate against citizens of those States wherein laws discriminating against beer manufactured in Michigan have allegedly been passed, and to favor unlawfully citizens of the State of Michigan.

D. Said Liquor Control Acts violate the Fourteenth [fol. 18] Amendment to the Constitution of the United States, which, among other things, provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law," in that the passage and enforcement of said Liquor Control Acts against plaintiff will destroy plaintiff's business in Michigan, as aforesaid, and thereby deprive plaintiff of its property without due process of law, and thereby confiscate plaintiff's property in Michigan. Said Liquor Control Acts do not constitute due process of law because said Liquor Control Acts are not general in their operation, but operate only against the importation of beer and only against the imporation of beer from States designated and to be designated by the Liquor Control Commission of the State of Michigan as having laws, rules or regulations discriminating against beer produced in the State of Michigan, and because said Liquor Control Acts constitute class legislation, as herein set out, and because said Liquor Control Acts destroy plaintiff's right to make contracts without any reasonable basis, and because said Liquor Control Acts destroy plaintiff's rights to enforce contracts already made without any reasonable basis, and because said Liquor Control Acts deprive plaintiff of its right to acquire and possess property, and because said Liquor Control

Acts make unreasonable classifications, and because said Liquor Control Acts make possession or sale of merchandise, previously lawful to possess and sell, unlawful, and because said Liquor Control Acts confiscate and destroy plaintiff's property by legislative enactment, and because the laws of the State of Michigan make any place in Michigan where beer manufactured in Indiana is received, possessed or sold, a nuisance, whereas such places do not and [fol. 19] will not constitute nuisances as a matter of fact, and because said Liquor Control Acts confiscate and destroy plaintiff's property and rights without a trial or a hearing and without employing any method of judicial procedure, and because said Liquor Control Acts make importation into the State of Michigan and possession in the State of Michigan of plaintiff's products unlawful, regardless of intent, and because said Liquor Control Acts delegate judicial powers to the Liquor Control Commission of the State of Michigan, which is not a judicial body, and because said Liquor Control Acts authorize the Liquor Control Commission of the State of Michigan to make findings of fact and law which operate upon plaintiff's rights and plaintiff's property without giving any previous notice to plaintiff, and without extending to plaintiff the opportunity of a hearing, and because said Liquor Control Acts delegate legislative powers to the Liquor Control Commission of the State of Michigan which is not a legislative body, and because said Liquor Control Acts delegate the legislative power of the State of Michigan to the law making bodies of the several other States of the United States, since the law making bodies of such other States can, by passing or repealing laws in such other States, make acts in the State of Michigan lawful or unlawful, and because said Liquor Control Acts infringe and usurp the sovereign power of the several other States of the United States to construe and interpret their own laws, rules and regulations and to determine the validity and effect of the same and because said Liquor Control Acts create classifications between citizens and residents of the State of Michigan offering for sale, receiving or possessing beer manufactured in the State of Michigan and other citizens and residents of the State of Michigan offering for sale, receiving or possessing beer manufactured in other States, such as Illinois, Maryland and Kentucky, Massachusetts and Mis-

[fol. 20] souri, and because said Liquor Control Acts take and confiscate plaintiff's property in the State of Michigan without any compensation to plaintiff.

E. Said Liquor Control Acts violate the Fourteenth Amendment to the Constitution of the United States, which provides: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws," in that said Liquor Control Acts constitute a law which abridges the privileges and immunities of plaintiff as a citizen of the United States and of the State of Indiana, in this, that said Liquor Control Acts abridge and destroy the right of plaintiff as a citizen of Indiana to conduct its business of manufacturing beer in the State of Indiana and transporting same into the State of Michigan for sale and use in said State, which said right, privilege and immunity is possessed by citizens of other States, such as the States of Illinois, Maryland, Kentucky, Massachusetts, Missouri, and Michigan and in this, that said Liquor Control Acts deprive plaintiff of its property without due process of law for the reasons aforesaid, and that said Liquor Control Acts deny to plaintiff the equal protection of the laws, in that they create unreasonable classifications and distinctions as aforesaid, and in that said Liquor Control Acts create a special privilege, right, immunity and benefit for the citizens of such other States as Illinois, Maryland, Massachusetts, Missouri, Kentucky, who are engaged in the manufacture of beer in such other States and the transportation of such products into the State of Michi-
[fol. 21] gan for the purpose of sale and distribution in the State of Michigan.

F. The acts of Congress prohibiting the shipment in interstate commerce of alcoholic malt beverages, and alcoholic liquors from one State into another State, intended to be received, possessed, sold, or used in violation of the laws of said State, do not confer upon a State the power or right to discriminate injuriously against the products of

other States as to such commodities, the manufacture, sale and use of which are not forbidden, and which are, therefore, the subject of legitimate commerce; the provisions of said Liquor Control Acts, as they relate to the importation of alcoholic malt beverages into the State of Michigan and to the transportation, possession and sale in the State of Michigan of such beverages produced without the State are invalid because grossly and injuriously discriminatory against the products of plaintiff, which are manufactured in another State and because they impose a direct burden upon interstate commerce, and because they constitute onerous, arbitrary and oppressive legislation, and because of other reasons hereinbefore alleged.

Clause Eleven (1)

Said Liquor Control Acts, particularly section 40 thereof, are also invalid because the evident purpose and intent thereof is to keep the beer products of the State of Indiana out of this State, and because insofar as this purpose is sought to be enacted by certain provisions in said laws, said provisions are not within the title of said Act and are therefore in violation of Section 21 of Article V of the Constitution of 1908 of the State of Michigan, and are therefore unconstitutional and void. Said legislation also violates the "due process" clause of Section 16 of Article II of the Constitution of 1908 of the State of Michigan, here-
[fol. 22] inabove alleged.

Clause Twelve

In the State of Indiana there are numerous other manufacturers of beer who are in a situation similar to that of plaintiff, and plaintiff brings this action on behalf of such others so similarly situated, as well as itself, and the granting of an injunction by this Court against the enforcement of said Liquor Control Acts will prevent a multiplicity of suits and prosecutions which will otherwise arise in connection with the enforcement of said act.

Clause Thirteen

Defendants, and each of them, unless restrained and enjoined by this Court from so doing, will unlawfully harrass and threaten plaintiff and its customers and will enforce

against it and others each and all the provisions of said Liquor Control Acts and cause the plaintiff great and irreparable damage and injury and result in the complete destruction and loss of plaintiff's business in the State of Michigan.

Clause Fourteen

A. Plaintiff has no adequate remedy at law and unless plaintiff is afforded the protection which only a court of equity can afford, plaintiff will be exposed to a multiplicity of suits, complaints and prosecutions, and will lose its customers in the State of Michigan, due to the fact that such persons as are now handling and desire to continue to handle beer manufactured by plaintiff for sale in the State of Michigan, already have, and will cease handling plaintiff's products because of fear of prosecution, penalties and forfeitures, and plaintiff's good will in the State of Michigan will be destroyed, and plaintiff's reputation and credit in the State of Michigan will be destroyed, and plaintiff's reputation and credit elsewhere will be damaged; and plain-
[fol. 23] tiff's distribution system in the State of Michigan will be destroyed, and plaintiff's reputation will be damaged by reason of the institution of prosecutions and complaints, even if same are terminated favorably to plaintiff, and the demand in the State of Michigan for beer manufactured by plaintiff in the State of Indiana will immediately be destroyed and no further purchases of said products will be made by purchasers for resale within the State of Michigan, and plaintiff will suffer injuries, damage and losses which would not be subject to accurate and correct computation and would not be recoverable from any persons responsible therefor, and which damages could not be recompensed by money, and plaintiff will be compelled to submit to trespasses and invasions of the rights guaranteed to plaintiff under the before mentioned provisions of the Constitution of the United States.

B. In order to protect plaintiff's rights and property in the premises, a temporary restraining order should be issued immediately, restraining the defendants above named, and each and every one of them, from enforcing, attempting or endeavoring to enforce in any way the provisions of the said Liquor Control Acts insofar as they violate the Constitution of the U. S. and State of Michigan, and particularly, among other things, from enforcing, or

attempting or endeavoring to enforce the provisions of section 40 of said Acts by adopting or attempting to adopt a regulation designating the State of Indiana as discriminatory within the meaning of said section or by any other means or method, because such action which defendants are threatening and are forthwith about to take will occur before due notice of this proceeding could be given or a hearing had thereon, and will cause plaintiff immediate irreparable loss, injury and damage as aforesaid.

Wherefore Plaintiff prays:

A. That writs of subpoena be issued, directed to defend-
[fol. 24] ants, herein, requiring them to appear and make full, true and complete answer to this bill of complaint, but not under oath (answers under oath being expressly waived), and to abide by and perform such orders and decrees as the Court may make in the premises.

B. That the said Liquor Control Acts, particularly section 40, of Act No. 281, of the Public Acts of 1937 of the State of Michigan be declared, adjudged and decreed to be void because contrary to the rights of plaintiff under the Constitution and laws of the United States, and the Constitution of the State of Michigan, as hereinabove set forth.

C. That the defendants, and each of them, their respective assistants, appointees, employes and successors and each of them be enjoined from in any way or manner enforcing or attempting to enforce against this plaintiff and others similarly situated the provisions of said Liquor Control Acts and said section 40, insofar as they are invalid, and particularly, but not exclusively, from adopting or attempting to adopt a regulation in pursuance of said section designating Indiana as a discriminatory state within the terms of said section; and from attempting to enforce against plaintiff by adopting such regulation or otherwise, any of the provisions of said Act, and from harrassing, threatening, intimidating, and instituting or causing to be instituted any prosecutions or proceedings, civil or crimiñal, against plaintiff, its officers, agents, employes, customers, or any of them, in an attempt to enforce any of such provisions of said Liquor Control Acts.

D. That a temporary or interlocutory injunction issue out of this Court restraining and enjoining the defendants as

aforesaid in paragraph "C" of plaintiff's prayer for relief, and that upon the final hearing of this cause, such injunction be made perpetual.

[fol. 25] E. That meanwhile, pending the hearing and determination of the application for such interlocutory injunction, to the end that plaintiff may not suffer an immediate, great and irreparable loss, this Court issue its temporary restraining order enjoining and restraining the defendants, and each of them, as aforesaid in paragraph "C" of plaintiff's prayer for relief.

F. That plaintiff may have such other and further relief in the premises as may seem just and equitable to this Court.

Indianapolis Brewing Company, Inc., by C. A. Frey. Harris W. Wienner, 1177 Penobscot Building, Detroit, Michigan, Tel.: Cherry 0632, Attorney for Plaintiff. McHale, Arthur & Myers, 1012 Chamber of Commerce Bldg., Indianapolis, Indiana; and Herbert J. Patrick, 1014 Chamber of Commerce Bldg., Indianapolis, Indiana, of Counsel.

[fol. 26] *Duly sworn to by C. A. Frey. Jurat omitted in printing.*

[fols. 27-30] EXHIBIT "A" TO BILL OF COMPLAINT

STATE OF MICHIGAN

Liquor Control Commission

License

No. 14. 14.
SB
L-101.

This Is To Certify, that a contract of license to sell Beer and/or Malt liquors to Michigan Liquor Control Commission wholesale permittees is hereby granted to Indianapolis Brewing Company, Inc., of 316 Agnes St., Indianapolis, County of Marion, State of Indiana.

This Contract License is granted under and in accordance with the provisions of Act No. 8, Public Acts of 1933, Extra Session, as amended, and shall continue and be in full force and effect until the first day of May, 1938, unless can-

celled, revoked or declared null and void by the Liquor Control Commission previous to the said date above set out.

In Witness Whereof, the Liquor Control Commission has caused these presents to be duly signed and sealed, and the said Licensee has caused these presents to be duly signed and sealed.

Liquor Control Commission, (Signed) E. W. McFarland, Chairman. (L. S.) (Signed) L. D. Rahilly, Secretary. (L. S.)

Licensee Sign Here:

Indianapolis Brewing Co. Inc. (L. S.) (Signed) C. A. Frey Sec. & Treas. (Seal 1937 Seller Beer.)

Date License Issued: April 29, 1937.

FE.

[File endorsement omitted.]

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed December 20, 1937

To the Honorable Judges of the District Court of the United States for the Eastern District of Michigan, Southern Division:

The plaintiff, Indianapolis Brewing Company, Inc., by way of supplemental bill of complaint in the above entitled cause, further alleges and says:

Clause One

That said plaintiff, for the purposes of this supplemental bill of complaint, adopts all of the allegations of clauses one, two, three, four, five, six and seven, of said original bill of complaint, and all other allegations therein contained, which are material and applicable to the allegations of this supplemental bill of complaint.

Clause Two

And said plaintiff further says that said original bill [fol. 32] of complaint was duly filed in this Court on the 10th day of December, 1937, at which time this Court entered its order upon and against said defendants and each of them to show cause why, if any, a temporary restraining

order, as prayed for in said original bill of complaint, should not be made and entered against said defendants and each of them, and this Court in said order further provided that a hearing on said application for a temporary restraining order should be held on Monday, the 20th day of December, 1937, at 9:30 o'clock A. M. of said day in open Court in the United States Courthouse and Post Office Building in the City of Detroit, Michigan, at which time the said defendants and each of them were required to appear and show cause, if any, why such temporary restraining order, as prayed for in said bill of complaint, should not be made and entered.

Clause Three

That a certified copy of said rule to show cause, as made and entered by this Court, was duly served on said defendants and each of them on the 13th and 14th days of December, 1937. but that in spite of such fact the said defendants in their official position as members, and constituting, the Liquor Control Commission of the State of Michigan on the 14th day of December, 1937, after the service of said certified copy of order to show cause upon them and each of them, in an effort to, and for the purpose of, defeating the purpose of this Court in conducting such proposed hearing on the matter of the issues of such temporary restraining order, made and adopted a regulation in the manner provided in said Section 40 of Act #281 of Public Acts of 1937 of the State of Michigan, designating the State of Indiana as a state of discrimination in the following words and figures to wit:

[fol. 33] "Pursuant to Act No. 8, Public Act, Extra Session of the year 1933 of the State of Michigan, as amended by Act No. 241 of the Public Act for the year 1935, and Act No. 281 of the Public Act for the year 1937, particularly Section 40 thereof, the Michigan Liquor Control Commission promulgates and adopts the following rule and regulation designating as discriminatory according to Section 40 of said Act the following States: Maine, Maryland, Nevada, Indiana, New Hampshire, North Carolina, Pennsylvania, Tennessee, Vermont, Washington. These designations are made after a careful examination of the laws and rules and regulations of the aforementioned states."

That as a result of the adoption of such regulation above set out, the importation, sale and possession of any and all

alcoholic malt beverages, commonly known as beer, manufactured by this plaintiff in the State of Indiana and by all other manufacturers of such products similarly situated in said State of Indiana, will become unlawful on and after the 14th day of March, 1938. That by reason of such act no opportunity exists upon the part of this Court to restrain the adoption of such regulation but this plaintiff, in view of such change in situation as a result of the adoption of such regulation now alleges and says:

1. That since the adoption of such regulation the various distributors and retailers in the State of Michigan now and heretofore selling, handling, and dealing in the products of this plaintiff, manufactured in the State of Indiana, commonly known as beer, and of like products of all other manufacturers similarly situated in the State of Indiana, are and have been placed in a position that if the said defendants continue to follow the policy of said order and to communicate, advertise and issue statements and plans and announcements of intention to carry out and enforce the said regulation that the good will of the said alcoholic products produced in the State of Indiana and heretofore attached to them will become more and more discounted, impaired, disparaged and irreparably injured and destroyed and the [fol. 34] said wholesalers and distributors will seek to and will handle other beers not produced in the State of Indiana and, to advertise and seek to build up a trade in beers produced in the State of Michigan or the importation of which from other states is not subject to the said rule and regulation and that said wholesalers will in respect to the good will, custom and trade already established in dealing in said beers produced in the State of Indiana be greatly damaged and injured and the said plaintiff and manufacturers in its class in the State of Indiana will from day to day increasingly lose business, trade, custom and good will in respect to said beer. And that such damage is in the process of happening at the present time; and will continue to so happen increasingly from and after this date and long prior to the effective date of said regulation on the 14th day of March, 1938, unless said defendants and each of them, individually and collectively, are immediately restrained and enjoined from issuing any notices, communications, statements, threats, advices or announcements and from doing any of the things herein charged that said defendants will do, all of which damage which is now occurring and will

occur prior to said 14th day of March, 1938, is incapable of being measured in actual amounts and will be irreparable, and that this plaintiff and other manufacturers similarly situated, has as his sole and only remedy the action in this Court as herein prayed for.

2. And this plaintiff now shows to the Court that as a result of the adoption of such regulation various distributors and dealers of alcoholic malt beverages in the State of Michigan have become reluctant and apprehensive in the matter of purchasing the further products of this plaintiff and other manufacturers similarly situated in the State of Indiana during the said period of ninety days following the adoption of such regulation, which said reluc-
[fol. 35] tance and apprehension will increase from time to time during said interim prior to the 14th day of March, 1938, because of the fact that among other things, the said distributors and retailers will be required within said period of ninety days to dispose of any such products of this plaintiff and other manufacturers in the State of Indiana prior to the expiration of said ninety days and will be required likewise, in order to maintain their said business in the State of Michigan, to make arrangements for the purchase of beer manufactured in the State of Michigan and in other states against which said regulation does not apply in order to take the place of and replace the beer heretofore and now being purchased from this plaintiff and other manufacturers similarly situated in the State of Indiana, and will, as a result thereof, proceed at once to sell on the market in the State of Michigan, at sacrifice prices, any and all such beer and alcoholic malt beverages which they now have on hand and which was produced by the plaintiff and others similarly situated in the State of Indiana, to their irreparable damage and injury and to the prejudice and irreparable damage of the relations between said plaintiff and said other persons in the same class with their purchasers, wholesalers, and distributors in the State of Michigan and to the irreparable damage to the good will and future business of said plaintiff and said other persons in the same class.

3. That the said defendants, individually and collectively, as members of the Liquor Control Commission of the State of Michigan, have threatened to and will, unless restrained and enjoined from so doing by this Court, immediately and

from time to time thereafter issue and promulgate, advertise and communicate, various orders, communications, advices, rules, regulations and supplemental orders and regulations during the said interim prior to the 14th day of March, 1938. for the purpose of carrying out, rendering effective [fol. 36] and making plans and arrangements to render effective said regulation adopted on December 14th, 1937, and hereinbefore set out, and for the purpose of further injuring and destroying the business and good will of this plaintiff and others similarly situated, and before any hearing can be had upon the application for a temporary injunction heretofore made by the original bill and this supplemental bill of complaint and all of which threatened acts on the prt of said defendants will irreparably damage and injure the said plaintiff and persons in its class and the business and good will of said plaintiff hereinbefore described and as to which loss and damage the said plaintiff and the said persons in its class will have no relief or means of recoupment unless the said restraining order be granted as herein prayed.

[fol. 37] Wherefore, in addition to such relief prayed for in the original bill of complaint herein, plaintiff prays that the defendants and each of them, individually, and as members of the Liquor Control Commission of the State of Michigan be immediately restrained and enjoined, until a hearing and determination can be had before this Court upon plaintiff's application for an interlocutory injunction from in any manner advertising, announcing, communicating or promulgating any further rules, regulations, notices, statements, communications, advices or threats to carry out or effect or to attempt to carry out or effect the regulations adopted by said Commission on the 14th day of December, 1937, or any part or parts thereof, and the policies and purposes and each of them of the said defendants herein complained of.

Indianapolis Brewing Company, Inc., an Indiana Corporation, by George Steinmetz, V. Pres., Plaintiff. Harris W. Wienner, 1177 Penobscot Bldg., Detroit, Mich., Attorney for Plaintiff. McHale, Arthur & Myers, 1012 Chamber of Commerce Bldg., Indianapolis, Indiana, and Herbert J. Patrick, 1014 Chamber of Commerce Bldg., Indianapolis, Indiana, Of Counsel.

[fols. 38-40] *Duly sworn to by George Steinmetz. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENTS TO BILL OF COMPLAINT AND SUPPLEMENTAL BILL OF COMPLAINT—Filed December 27, 1937

To the Honorable Judges of the District Court of the United States for the Eastern District of Michigan, Southern Division:

Now comes Indianapolis Brewing Company, Inc., the above named plaintiff and hereby amends its Bill of Complaint and Supplemental Bill of Complaint heretofore filed in this cause, in the following manner, and alleges:

I

Paragraph D of Clause Eight of said Bill of Complaint is hereby amended by eliminating from the second last line thereof the word "speculative" and inserting in its place and stead the words "incapable of admeasurement".

II

Paragraph F of Clause Eleven of said Bill of Complaint is hereby amended by inserting in the first line thereof after "Congress", the words "and the Constitution of the United States, as amended".

[fol. 42]

III

Clause Eleven of said Bill of Complaint is hereby amended by adding thereto a paragraph to be designated as paragraph "G", which paragraph is, as follows:

"G. The plaintiff alleges further; that said Section 40 of the said Public Act Number 8 of the extra session of the State of Michigan, as amended by Act No. 281 of the Public Acts of 1937 of the State of Michigan, and the said statutes of the State of Michigan herein referred to severally and

operating and construed together, are not a lawful exercise of the sovereignty of said State of Michigan and their respective enactments exceed [redacted] and *and* do now exceed the power and authority of [redacted]tate, or under the Twenty-first Amendment to the Co[redacted]tion of the United States or by virtue of any permission or grant of power to said State under last said amendment and each of said Acts and said Acts operating together deprive the plaintiff and persons in plaintiff's class of property and of the said business, good will, rights, contracts, immunities and privileges belonging to and now enjoyed by plaintiff, herein described, in contravention of the Fourteenth Amendment to the Constitution of the United States, and furthe[r] deny the equal *r*protection of the law in contravention of the said Fourteenth Amendment and also violate the provisions of Article I, Section 8 of the Constitution of the United States, and abridge the privileges and immunities of the said plaintiff and the persons in plaintiff's class in violation of said Fourteenth Amendment in each of the following respects and particulars, to-wit:

1. Section 40 of said Public Act No. 8 of the State of Michigan as amended by the said Public Act No. 281 of the Public Acts of the State of Michigan, 1937, above set out, arbitrarily [fol. 43] and unreasonably requires the exclusion of the beer, manufactured in the State of Indiana by plaintiff or persons in plaintiff's class, from the State of Michigan and prohibits the presence of said beer so produced within the State of Michigan for a cause and reason not appertaining to or related in any wise to public order, morals, health or welfare of the people of the State of Michigan or to the enforcement of any law or laws relating thereto; and the said Public Act of the State of Michigan herein complained of is without discernible public object; and,

2. The said amended Act complained of herein prescribes and enacts that the admission or exclusion of the said product manufactured in the State of Indiana, shall be based wholly upon whether or not the State of Indiana shall have in force a law or laws containing provisions which do not conform to the standards described in the said Public Act of the State of Michigan, which basis for the admission or exclusion of the said product, manufactured in the State of Indiana, from the State of Michigan is arbitrary, unreasonable, artificial and without relation to the public welfare, order, morals, health or happiness of the people of the State of Michigan.

3. The application and enforcement of the said two standards contained in said Act for the exclusion or admission of said products, and the statutory requirement thereof, constitutes an artificial and unjust classification in that all beer manufactured outside of the State of Michigan, is for the said purposes divided into two classes, namely, beer pro- [fol. 44] duced in States, the laws of which conform to the said provisions contained in said Public Act of the State of Michigan, and beer manufactured in States the laws of which do not conform to said provisions prescribed in said Public Act, which classification is unjust, unreasonable, arbitrary and is not based upon any essential difference in the product produced, in the qualifications of competency of those producing such beer; and the said classification of said beer by said artificial standards, results in the creation of two classes of manufacturer, the one class consisting of those manufacturing beer in States, the laws of which conform to the said provisions contained in said Public Act of the State of Michigan, and the other class manufacturing beer in States the laws of which do not conform to the said provisions, which classifications is unjust, unreasonable, arbitrary and without any discernible public object or relation to the control of the liquor traffic by the State of Michigan and said Act accords to the one class of said manufacturers, in respect to the shipment and sale of the beer produced by them in a State or States, the laws of which conform to said provisions, rights, privileges, the continued enjoyment of business and good will in the shipment and sale of said product, which are by said Public Act denied to the other class of said manufacturers in respect to the shipment into and sale in the State of Michigan of beer produced by said class of manufacturers in a State or States the laws of which do not conform to said provisions prescribed by the said Public Act; and said classification, while extending to one of said classes of manufacturers the equal protection of the laws of the State of Michigan in respect to the movement into and sale within Michigan of the beer by said manufacturers produced, denies to the other class of manufacturers, the protec- [fol. 45] tion of said laws in respect to the movement into and sale within Michigan of the beer produced by last said manufacturers.

4. That the true purpose and inevitable effect of the said statute herein complained of, and the enforcement thereof

and of the standards therein contained and described above, is to establish and maintain in the future an economic barrier against beer produced in Indiana and in other States, the laws of which do not conform to the said provisions and to constrain and require wholesalers, distributors and other licensees and consumers within the State of Michigan not to purchase, possess or consume beer produced in Indiana and in other States, the laws of which do not conform to said provisions, and to project the legislation of the State of Michigan within the borders of another State of the Union of States constituting the United States of America and to constrain and hamper the State of Indiana and the other States of said Union in the enactment and enforcement of laws relating to their domestic policy in respect to the alcoholic traffic contrary to the constitutional relationship of the said States under the said constitutional provisions and amendments herein invoked, on behalf of the said plaintiff and persons in the same class with plaintiff and contrary to and in violation of the rights of the said respect- States of the Union and of the rights, privileges and immunities of their citizens under said constitutional provisions, and which law and laws of the State of Michigan herein complained of are without other discernible purpose or object, and which said legislation complained of further violates the constitutional rights of the licensed wholesalers and distributors within the State of Michigan under the constitutional provisions of the Federal Constitution herein set out and for the same reasons herein set out showing the violation of the constitu-ional rights of this plaintiff and persons in plaintiff's class; and further in violation of the [fol. 46] said provisions of the Constitution deprives the wholesalers and distributors, licensees under the laws of the State of Michigan, who are in respect to said beer produced by this plaintiff and persons in plaintiff's class, customers of said plaintiff and of last said persons, and as to which said beer produced by said plaintiff and others in said plaintiff's class, the said distributors and wholesalers have built up through advertisements, sales efforts, and the investment of their monies, a valuable good will in business, and of which they will each be deprived by the said laws of Michigan herein complained of if the interlocutory injunction and final injunction herein prayed are denied and through the said injury and impairment and unlawful invasions of said rights of the said wholesalers, distributors and consumers

of the said plaintiff and of persons in plaintiff's class, in the handling and sale of the beer by said plaintiff and said other persons produced, this plaintiff and persons in plaintiff's class will be damaged and injured in the amounts and manner herein alleged and the said plaintiff and persons in plaintiff's class will be injured, damaged and suffer great and irreparable harm and damage not only through the deprivation of said constitutional rights of said plaintiff and persons in plaintiff's class, by the said Act and Acts herein complained of, but the said plaintiff and persons in plaintiff's class will suffer said loss and irreparable harm through the said violation of the said constitutional rights, privileges and immunities of said wholesalers, distributors and customers who are and have been and will purchase the said beer of the said plaintiff and persons in plaintiff's class.

[fol. 47] IV.

Clause Eleven of said Bill is further amended by adding thereto a paragraph to be designated as paragraph "H", which paragraph is, as follows:

"H. In the ten states designated by the said State Liquor Control Commission in their said regulation of December 14, 1937, the number of licensed breweries and the amount of beer by them produced during the fiscal year ending June 30, 1937 are now set out in the following table, to wit:

State	Number of Breweries	Barrels
Indiana	17	2,254,490
Maryland	12	1,338,893
Nevada	2	21,388
New Hampshire	1	58,824
North Carolina	1	82,293
Pennsylvania	109	6,614,907
Tennessee	3	155,952
Washington	17	915,391
Vermont	0	0

That in the fiscal year ending June 30, 1937, beer was produced in respective states named below by the number of breweries and in the amounts now set out:

State	Number of Breweries	Barrels
Illinois	62	4,059,423
Kentucky	7	986,039
Missouri	20	3,442,809
New York	69	9,230,725
Ohio	55	4,281,448
Wisconsin	86	6,448,420

That during the first nine calendar months in the calendar year 1937 there were in all 603,241 barrels of beer produced outside of and imported into the State of Michigan. During the first ten calendar months in the calendar year 1937 there were imported into the State of Michigan 145,250 barrels of beer produced in the State of Indiana. That substantially all of said 603,241 barrels of said beer imported into the State of Michigan during the said nine [fol. 48] months excepting the portion imported from the State of Indiana, were produced and shipped from the states of Illinois, Missouri, Ohio and Wisconsin and substantially no part of said beer produced outside of the State of Michigan and imported into the State of Michigan for sale therein during the said period of nine months was produced or shipped from the states of Maryland, Nevada, New Hampshire, North Carolina, Pennsylvania, Tennessee and Washington and none whatsoever from the State of Vermont. And that during the same period the amount of beer imported into the State of Michigan which was produced in other states of the Union than Michigan amounted to about twenty per cent of the total amount of beer consumed in the State of Michigan. That in the four states of Illinois, Missouri, Ohio and Wisconsin, which, as above alleged, produced and imported into the State of Michigan in excess of two-thirds of the total amount of beer imported into the State of Michigan during said period, are located the number of breweries as above set out which are capable of producing and importing into the State of Michigan far more beer in addition to that already being imported into the State of Michigan therefrom than was produced in the State of Indiana and shipped into the State of Michigan.

That in the said regulation adopted by said Liquor Control Commission of the State of Michigan on December 14, 1937, the states of Illinois, Missouri, Ohio and Wisconsin are not designated as states having laws containing the pro-

visions which reqnire under said legislation of the State of Michigan the exclusion of beer produced therein.

That in fact the laws of the states which are not designated in the said regulation of the Liquor Control Commission of the State of Michigan do not contain provisions requiring the exclusion of beer produced therein under the said legislation of the State of Michigan.

That in truth and fact the type of liquor control statute described in said amended Section 40 herein complained of has no bearing or relation to the amount of beer produced in any of the said states and shipped into the State of Michigan and the fact whether or not laws of any of said [fol. 49] states contain provisions which require or do not require the exclusion of beer produced therein under said Section 40 has no bearing upon or relation to the amount of beer produced therein and shipped into the State of Michigan and the said standards prescribed in said statute of the State of Michigan for the admission or exclusion of beer produced in other states according to the provisions of the laws of other states have no bearing or relation in fact to the amount of beer made in any state and shipped therefrom into the State of Michigan or any bearing or relation to the control of liquor traffic in the State of Michigan."

V

The Supplemental Bill of Complaifft hereto filed by plaintiff in this cause is hereby amended so that the incorporation by reference therein of certain provisions of the Bill of Complaint shall relate to the provisions of this Bill of Complaint as amended. In particular Clause One of said Supplemental Bill is hereby amended by inserting in line four after "complaint" the words "as amended".

H. W. Wienner, Attorney for Plaintiff, Business address: 1177 Penobscot Bldg., Detroit, Michigan. McHale, Arthur & Myers, 1012 Chamber of Commerce Bldg., Indianapolis, Indiana and Herbert J. Patrick, 1014 Chamber of Commerce Bldg., Indianapolis, Indiana, and Thomas F. O'Mara, Suite 315, Opera House Block, Terre Haute, Indiana, of Counsel.

[fols. 50-66] *Duly sworn to by Carl Frey. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED MOTION TO DISMISS—Filed January 17, 1938

To the Honorable Judges of the District Court of the United States for the Eastern District of Michigan, Southern Division:

Come now the above named defendants, and each of them, and amend their Motion to Dismiss heretofore filed, and as further grounds and reasons for their Motion to Dismiss the Bill of Complaint, the Supplemental Bill of Complaint and the Amendments to the Bill of Complaint and Supplemental Bill of Complaint heretofore filed, state:

1. That said Bill of Complaint, Supplemental Bill of Complaint and the Amendments thereto fail to show that the plaintiff is entitled to the relief therein demanded or to any relief whatsoever, in that:

(a) Section 40 of Act No. 8 of Public Acts of the State of Michigan of 1937, as amended, was enacted by the Legislature of the State of Michigan pursuant to the authority [fol. 68] and within the limits of the Twenty-first Amendment to the Constitution of the United States of America;

(b) That there is in force in the State of Indiana laws, rules and regulations which discriminate against beer manufactured within the State of Michigan in manner prohibited by said Section 40, in that the laws, rules and regulations in force in the State of Indiana require a licensed wholesaler of beer within the State of Indiana, who has paid a license fee of One Thousand Dollars ($1,000.00) for such privilege, to secure an additional license called a "port of entry" permit, for which a further fee of Fifteen Hundred Dollars ($1500.00) is required to be paid for the privilege of importing into and selling within the State of Indiana beer manufactured in the State of Michigan;

(c) That said laws, rules and regulations now existing within the State of Indiana are further discriminatory in that they deny the issuance of such license authorizing the importation of beer manufactured within the State of Mich-

igan to any duly licensed wholesaler of beer within the State of Indiana who may make application for such license, but, on the contrary, limit the issuance of such additional "port of entry" permits to not more than one hundred (100) thereby limiting the number of licensees who may purchase and import beer manufactured within the State of Michigan;

(d) That by reason of the existence of such laws and regulations within the State of Indiana, said State has been properly designated by the Liquor Control Commission of [fol. 69] the State of Michigan as one in which discriminatory laws, rules and regulations exist.

2. That said Section 40 of the Michigan Liquor Control Act does not violate Section 8 of Article I of the Constitution of the United States for the reason that the Twenty-first Amendment to said Constitution abrogated the right to import free so far as intoxicating liquors were concerned.

3. That said Section 40 of the Liquor Control Act does not violate Section 10 of Article I of the Constitution of the United States for the reason that the prohibitions of said Section are only applicable to licensees purchasing, receiving, possessing or selling beer manufactured in any State designated by the Liquor Commission in a regulation, which State has been found to discriminate against beer manufactured within the State of Michigan, and that the revocation of the license of any person violating such regulation would not amount to an impairment of an obligation of a contract for the reason that a license to deal in intoxicating liquor is but a mere personal privilege granted by the Legislature of a State and is subject to the terms and conditions imposed at the time of its issuance, and such license is not a contract within the terms and meaning of Section 10 of Article I of the Constitution of the United States.

4. That said Section 40 of the Michigan Liquor Control Act does not violate Section 2 of Article 4 of the Constitution of the United States for the reason that the plaintiff is a corporation, organized and existing under the laws of [fol. 70] the State of Indiana, and is not a citizen entitled

to claim the benefits of the Privileges and Immunities Clause.

5. That said Section 40 of the Michigan Liquor Control Act does not violate the Fourteenth Amendment to the Constitution of the United States for the following reasons:

(a) The plaintiff corporation is not a citizen of the United States whose privileges or immunities are abridged by said Act;

(b) The plaintiff corporation is not a person within the jurisdiction of the State of Michigan which is denied the equal protection of the laws for the reason that the Bill of Complaint shows that said plaintiff corporation is organized and existing under the laws of the State of Indiana; said Bill of Complaint fails to allege facts which would amount to "doing business" by said corporation within the State of Michigan or which would subject it to the service of process therein. Said Bill of Complaint further fails to show that it has complied with the requirements of Statute of the State of Michigan which are prerequisite to its right to do business therein as a foreign corporation or which would subject it to or bring it within the jurisdiction of the State of Michigan.

(c) That said Section 40 of the Michigan Liquor Control Act does not violate the Fourteenth Amendment or the Equal Protection of the law's provision thereof, in that the Twenty-first Amendment recognizes and permits a State to classify intoxicating liquor which is manufactured outside thereof in a manner other and different than the *than* [fols. 71-80] *the* same kind of intoxicating liquors which are manufactured within said State, and such classification recognized by the Twenty-first Amendment is not forbidden by the Fourteenth.

6. That said Michigan Liquor Control Act and, particularly, Section 40 thereof, is not unconstitutional because of an unwarranted delegation of legislative power for the reason that said Section clearly defines and prescribes the conditions and circumstances under which said Section is made operative and nothing remains to be done by the Liquor Control Commission except to determine the fact

as to whether the legislation or the rules or regulations of another State conform to the terms and conditions prescribed in said Section 40.

Raymond W. Starr, Attorney General; George H. Heideman, Assistant Attorney General, Attorneys for the above named Defendants.

[File endorsement omitted.]

[fol. 81] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In Equity. No. 8269

INDIANAPOLIS BREWING COMPANY, INC., an Indiana Corporation, Plaintiff,

v.

THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN et al., Defendants

Before Simons, Circuit Judge, and Moinet and O'Brien, District Judges

OPINION—Filed February 3, 1938

SIMONS, Circuit Judge:

The plaintiff is a brewing corporation of the State of Indiana, and brings this suit by bill in equity against the members of the Michigan Liquor Control Commission, the Governor and Secretary of State as ex-officio members of the Commission, and the State's Attorney General, to restrain by temporary and permanent injunction the enforcement of certain provisions of the State Liquor Law on the ground that they are violative of both Federal and State Constitutions. In conformity with law, a three judge court was specially convened to consider the petition for interlocutory injunction. No answer having been filed—the defendants moving to dismiss—we find the facts, so far as necessary to decision, as alleged in the bill and its accompanying affidavits.

The plaintiff is engaged in the manufacture of beer in Indiana and its sale in interstate commerce. The defend-

ants are residents and citizens of Michigan and public officers of that state charged with the duty of enforcing its liquor laws and proposing to do so. The plaintiff is a licensee of the Michigan Liquor Control Commission, qualified as an out-of-State manufacturer to ship beer into Michigan, and has built up a valuable business and good will for its product in that State. In July, 1937, the Michigan Legislature amended Section 40, of Act. No. 8, of the Public Acts of the Extra Session of 1933 to provide that after its effective date the Liquor Control Commission should forthwith adopt a regulation designating the states, the laws, rules or regulations of which: (1) are found to require a [fol. 82] licensed wholesaler of beer therein to pay an additional fee for the right to purchase, import, or sell beer manufactured in Michigan; or (2) which deny the issuance of a license authorizing the importation of beer to any duly licensed wholesaler of beer therein who may make application for such license; or (3) which prohibit licensed wholesalers of beer therein from possession or selling beer purchased in Michigan, unless the one from whom it is purchased has secured a license and paid a fee therein, when such seller neither transports the beer into said state nor sells the same therein; or (4) impose any higher taxes or inspection fees upon beer manufactured in Michigan when transported into or sold therein than is imposed upon beer manufactured and sold within said state, and that the regulation so adopted shall prohibit all licensees from purchasing, receiving, possessing or selling, any beer manufactured in any state therein designated, such regulation to become effective ninety days after its adoption.

Pursuant to the authority and direction of amended Section 40, the defendant Liquor Control Commission on the 14th day of December, 1937, adopted a regulation as therein provided designating specific states, including Indiana, as discriminatory, and as a result the purchasing, receiving, possessing or selling of any beer manufactured in Indiana will become unlawful after the 14th day of March, 1938. The enforcement of this regulation will injure or destroy the business which the plaintiff has developed in Michigan. The discriminations against Michigan beer by the State of Indiana which led to the proscription of beer from that state by the regulation, are to be found in Sections 8, 9 and 41 of the Indiana Liquor Control Act of 1935. They require that

licensed Indiana wholesalers in order to secure an import privilege pay an additional fee of $1500.00, and limit such permits to not more than 100. They require an additional bond for handling out-of-state beer of $10,000, and limit importation to beer which is the absolute property of the permittee.

While the bill assails validity in respect to numerous provisions of the Federal and State Constitutions, the issue, upon consideration of the decision in State Board of Equalization v. Youngs Market Co., et al., 299 U. S. 51, followed and applied by a local three judge court in Zukaitis, et. al., v. Fitzgerald, et al., 18 Fed. Supp. 1000, has now been narrowed in argument and briefs to a consideration of the assailed statute in respect to invalidity under the "Equal Protection Clause" of the Fourteenth Amendment. This is the plaintiff's main reliance.

[fol. 83]

Conceding that under the Young's Market case a state may in the exercise of its police power, now freed by the Twenty-first Amendment from the restraint of the commerce clause, discriminate against out-of-state beer, or against persons importing or dealing in such beer, and likewise conceding under compulsion of that decision that a classification which distinguishes in treatment as between local beer and out-state beer does not offend the equal protection clause, the plaintiff urges that a classification which differentiates the product of certain states from that of other states is wholly arbitrary and capricious, and void under the equal protection clause. There exists no reasonable basis, it says, for this difference of treatment, and the regulation has no relation to the exercise of the police power of the state in protecting the health, safety, morals and welfare of its people. Nor does it aid in policing the state's regulatory laws governing the manufacture and sale of beer. Its purpose, it contends, is purely retaliatory and economic, for Michigan has no concern with the laws of other States and no power to impose its will by economic restrictions or prohibitions upon the law making power of other states. Nor has it the power to enact statutes or adopt regulations the enforcement of which may be subject to the exercise of legislative power in another state.

We have carefully examined the contentions thus stated. That the scope of state police power, except as it may have been restricted by constitutional grant of power to the Fed-

eral Government, is not limited by narrow connotations to be assigned to the historic phrase "the protection of the health, safety and morals of the people", would seem to be fairly clear upon consideration of many decisions. L. S. and M. S. Railroad Co. v. Ohio, 173 U. S. 285; C. B. & Q. Railroad Co. v. Drainage Commission, 200 U. S. 561, 592; Mutual Loan Co. v. Martell, 222 U. S. 225; Barbier v. Connelly, 113 U. S. 27; Cox v. Texas, 202 U. S. 446. Were there still doubt of the extent of such power as is sought to be exercised in the presently considered enactment it would, we think be resolved by the recent decision of the Supreme Court in the Louisiana Chain Store case (Great Atlantic & Pacific Tea [fol. 84] Co. v. Grosjean, 301 U. S. 412), wherein it was thought to reach to the promotion of "fair competitive conditions and to the equalization of economic advantages", and where it was also thought not limited by the fact that "the evils requiring regulation arise solely from operations * * * in part the result of extrastate transactions".

It is true, of course, that arbitrary discriminations and classifications without reasonable basis, are repugnant to a system of constitutional limitations, and may offend against the letter of the equal protection clause. But courts will not lightly assume legislative arbitrariness and caprice, and will not "declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators". So, "A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it * * *". Metropolitan Co. v. Brownell, 294 U. S. 580.

That the discrimination of the statute here assailed and the regulation adopted in pursuance thereof are not directed specifically against the industries of Indiana or their customers in Michigan is clear, for nine other states are in the same classification, and it operates equally upon all. Let it be conceded that a classification, even though general in terms, may still be unreasonable and arbitrary, such is not the case here. The long history of efforts by state and national governments to control and regulate the manufacture and sale of alcoholic beverages, culminating in the adoption of the prohibitory Eighteenth Amendment and its repeal by

the Twenty-first Amendment, with the qualification incorporated therein, demonstrates beyond peradventure that the manufacture and sale of alcoholic liquors are peculiarly subject to abuse, and that the public interest requires their most careful supervision. To that end states generally limit the number of persons who may engage therein, require licenses and bonds, and inquire into the character, reputation, and financial ability of permittees. Where the industry is legalized there is a vital state interest in the economic stability of those who are permitted to engage in it, to the end that the usually high taxes and license fees may be promptly paid and that difficult competitive conditions may not tempt them to sharp practice and law evasion. [fol. 85] Strict numerical limitation upon manufacturers, wholesalers, and retailers, is sufficiently demonstrative. Michigan finding the markets of other states closed to its own industry while its own market is open to unlimited competition, is free to seek legislative correction of an unequal competitive condition within the limits of its power. It may not, of course, exercise extra-territorial power or control the legislatures of its sister states, but it is idle to deny it power to regulate its own industry and control its own market to the extent that its industries are elsewhere excluded, and to the extent that such exclusion threatens their economic stability, and it is not an unreasonable classification to discriminate against out-state products in respect to their source when the laws of the state of origin create the evil sought to be remedied and the classification operates equally upon all who fall within its reach.

It is not sound challenge to this power to say that the Michigan Act will not effectuate the legislative purpose since the closing of its doors to beer of ten states will only bring a greater flow of beer into Michigan from the larger producing states of which Indiana is not one. The contention is based on speculation, but even if rested upon fact it is still tenuous, for "the Legislature is not required to make meticulous adjustments in an effort to avoid incidental hardships. It is enough that the classification has reasonable relation to the differences * * *." Atlantic & Pacific Tea Co. v. Grosjean, Supra, 424. Power is not to be denied merely because it might have been more wisely or more effectually exercised.

The plaintiff relies very largely for support to its assault upon the reasonableness of the classification upon the de-

cision of a three-judge court in Minnesota in the case of Joseph Triner Corp. v. Mahoney, State Control Commissioner, 11 Fed. Supp. 145, decided originally before the announcement of the decision in the Young's Market case but thereafter to the same effect under the style Triner Corp. v. Arundel, 20 Fed. Supp. 1019. It is sufficient to say that the Triner case involved a classification wholly dissimilar to that here considered, that the Minnesota court found no reasonable basis for it, while for that here involved we do.

Notwithstanding an early concession that the validity of the regulation adopted by the Commission is not involved in this action except insofar as dependent upon the validity of the law authorizing it, the plaintiff makes belated effort [fols. 86-87] to comonstrate that the Indiana Liquor Law does not substantially discriminate against out-state beer. We are not confronted, however, with choice of accepting one of two inconsistent positions, for neither the bill nor the amended bill allege infirmity in the regulation if the law be valid. Had such issue been raised it might have been met by the defense of adequate legal remedy under the provision contained in Section 40 that "Any licensee or person adversely affected shall be entitled to review by certiorari to the proper court the question as to whether the Commission had acted illegally or *in excess of authority in making its finding with respect to any state.*" The question not being here, we do not, of course, decide it.

Our conclusion is that the assailed Michigan statute is constitutionally valid. There being no other ground upon which it is sought, the prayer for interlocutory injunction is denied. It appearing also that a hearing upon the merits will add nothing to applicable or presently conceded facts, that relief, both temporary and permanent, is grounded solely upon asserted invalidity of the statute, and the case, unlike Borden's Co. v. Baldwin, 293 U. S. 194, not being one where evidence is reasonably likely to make answer to that question clearer.

The bill is dismissed, with costs to the defendants.

Charles C. Simons, Circuit Judge. Edward J. Moinet, District Judge. Ernest A. O'Brien, District Judge. c/o C. C. S.

February 3, 1938.

[File endorsement omitted.]

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted.]

PLAINTIFF'S PROPOSED SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER EQUITY RULE 70½—Filed February 23, 1938.

The matter of the application of plaintiff's herein for an interlocutory injunction having come on regularly for hearing on the — day of December, 1937, at the hour of 1:30 o'clock P. M. in the Court room of the Honorable Edward J. Moinet on the 7th Floor of the Federal Building, in the City of Detroit, Michigan, before the Honorable Charles C. Simons, Judge of the United States Circuit Court of Appeals for the Sixth Circuit, the Honorable Edward J. Moinet, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, and the Honorable Ernest A. O'Brien, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, organized and sitting as a three-judge Court under and by virtue of the provisions of Section 266 as amended, of the Judicial Code of the United States, (Section 380 of the United States Code Annotated), for the hear-
[fol. 89] ing and determination of this cause, plaintiff being represented and appearing by Harris W. Wienner, Thomas F. O'Mara and Herbert J. Patrick, of its counsel, and defendants, the Liquor Control Commission of the State of Michigan, Edward W. McFarland, Hale G. Knight, Verold F. Gormely, individually and as members of the Liquor Control Commission of the State of Michigan, Frank Murphy, and Leon D. Case, individually and as members ex officio of the Liquor Control Commission of the State of Michigan, and Raymond W. Starr, individually and as Attorney General of the State of Michigan, being represented and appearing by their counsel, —— Heidemann, Deputy Attorney General of the State of Michigan and counsel for the Liquor Control Commission of the State of Michigan, and the motion of said defendants for a dismissal of plaintiff's bill of complaint having also come on for hearing at said time and place and having been heard, and the Court having heard all of the evidence introduced at such hearing and the argument of counsel and being duly advised in the premises and having announced its decision in favor of the defendants

and against the plaintiff, now makes its findings of fact and conclusion of law pursuant to the provisions of Equity Rule 70½ as follows:

1. The plaintiff, Indianapolis Brewing Company, In., is a corporation organized under the laws of the State of Indiana, with its principal office for the transaction of business in the City of Indianapolis, County of Marion, in said State, and is a citizen and resident of said State, and is not a citizen or resident of the State of Michigan.

2. The defendant, The Liquor Control Commission of the State of Michigan, is the duly organized and existing authority created by Act No. 8, of the Public Acts of the Extra Session of 1933 of the State of Michigan, as amended by Act No. 241 of the Public Acts of 1935, and Act No. 281 of the Public Acts of 1937 of said State, and by said laws and stat- [fol. 90] utes is vested with the sole right, power and duty to control the alcoholic beverage traffic within the State of Michigan, and is charged with the enforcement and administration of said laws and statutes and is a citizen and resident of the City of Lansing, County of Ingham, State of Michigan, and is a citizen and resident of the Eastern District of Michigan, Southern Division thereof.

The defendants, Edward W. McFarland, Hale G. Knight and Verold F. Gormely, are members of the Liquor Control Commission and all citizens and residents of the State of Michigan and of the Eastern District of Michigan, Southern Division.

The defendant, Frank Murphy, is the duly elected, qualified and acting Governor of the State of Michigan, and as such is a member ex officio of the Liquor Control Commission of the State of Michigan and is a citizen and resident of the State of Michigan.

The defendant, Leon D. Case is the duly elected, qualified and acting Secretary of State of the State of Michigan, and as such is a member ex officio of the Liquor Control Commission of the State of Michigan and is a citizen and resident of the State of Michigan.

The defendant, Raymond W. Starr, is the duly elected, qualified and acting Attorney General of the State of Michigan and is a citizen and resident of the State of Michigan.

3. That the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of Three Thousand ($3,000.00) Dollars.

4. That this is an action in equity brought pursuant to the provisions of Section 266 as amended, of the Judicial Code of the United States (Section 380, United States Code Annotated) for the purpose of obtaining a temporary restraining order, an interlocutory injunction and a permanent injunction against the said defendants and each of them to restrain and enjoin them from enforcing the provisions of Section 40, Act No. 281, as amended, of the Public Acts of the State of Michigan and the enforcement of a certain [fol. 91] regulation adopted by the Liquor Control Commission of the State of Michigan on the 14th day of December, 1937, pursuant to said Section 40, upon the ground that Section 40 violates the provisions of the Constitution of the United States.

5. The plaintiff is engaged in the manufacture of beer in Indiana and of its sale in interstate commerce and is a licensee of the Michigan Liquor Control Commission, qualified as an out of state manufacturer to ship beer into Michigan, and has built up a valuable business and good will for its product in the State of Michigan.

6. The defendants and each of them are public officers of the State of Michigan charged with the duty of enforcing the liquor laws of such state.

7. The Legislature of the State of Michigan in July, 1937, amended Section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933 to provide that after its effective date the Liquor Control Commission of said State should forthwith adopt a regulation designating the states, the laws, rules or regulations of which, (1) are found to require a licensed wholesaler of beer therein to pay an additional fee for the right to purchase, import, or sell beer manufactured in Michigan, or (2) which deny the issuance of a license authorizing the importation of beer to any duly licensed wholesaler of beer therein who may make application for such license, or (3) which prohibit licensed wholesalers of beer therein from possessing or selling beer purchased in Michigan, unless the one from whom it is purchased has secured a licensed and paid a fee therein, when such seller neither transports the beer into said state nor sells the same therein or (4) impose any higher taxes or inspection fees upon beer manufactured in Michigan when transported into or sold therein than is imposed upon beer manufactured and sold within said state; and that the regu-

lation, when so adopted, shall prohibit all licensees in the State of Michigan from purchasing, receiving, possessing or selling any beer manufactured in any state therein desig- [fol. 92] nated, such regulation to become effective ninety days after its adoption.

8. That pursuant to the authority and direction of said amended Section 40, the defendant Liquor Control Commission of the State of Michigan, on the 14th day of December, 1937, adopted a regulation as therein provided, designating specific states, ten in number, and including the State of Indiana, as discriminatory under the provisions of said Section 40, and as a result of the adoption of such regulation, the purchasing, receiving, possessing or selling of any beer manufactured in Indiana will become unlawful in the State of Michigan after the 14th day of March, 1938.

9. That the provisions of the laws of Indiana which bring such state within the classifications of said Amended Section 40 are found in Sections 8, 9 and 41 of the Alcoholic Beverage Act of 1935 of the State of Indiana, which provide that licensed Indiana wholesalers, in order to secure the privilege of importing beer into the State of Indiana from points outside of such state and of selling the same in all of the counties of the State of Indiana, are required to pay for such privilege an additional fee of Fifteen Hundred ($1500.00) Dollars and to file with the proper state authorities an additional bond in the sum of Ten Thousand ($10,000.00) Dollars, and that the number of such permits so to be issued in said State of Indiana shall be not more than one hundred (100) in number and that no beer shall be imported pursuant to any such permit which is not the absolute property of the permittee importing the same.

10. That as a result of the adoption of this regulation by the Liquor Control Commission on the 14th day of December, 1937, the valuable business and good will which this plaintiff has built up for its product in the State of Michigan is being greatly and increasingly injured and will be after the 14th day of March, 1938 entirely destroyed, and that the value of such business is in excess of Ten Thousand ($10,000.00) Dollars.

[fol. 93] 11. That in the conduct of its business plaintiff has during the past several years sold large quantities of its products to duly licensed wholesalers and distributors

in the State of Michigan and that the approximate value of plaintiff's products so sold in said state for the years 1935, 1936 and the first ten months of the year 1937 have totaled the sum of $127,489.35.

12. That there are in the State of Indiana numerous other manufacturers of beer who are in a situation similar to that of plaintiff and that the plaintiff brings this action on behalf of itself and of such others so similarly situated and that if the relief prayed for in plaintiff's bill of complaint is granted, the same will prevent a multiplicity of suits and prosecutions which would otherwise arise in connection with the enforcement of said act.

That the defendants, and each of them, unless restrained and enjoined by this Court from so doing will enforce against the plaintiff herein and its customers and against such others similarly situated the provisions of said Section 40 hereinbefore referred to and will, after the 14th day of March, 1938, take such steps by way of prosecution and otherwise under the provisions of said Liquor Control Act of the State of Michigan as may be necessary to prevent any and all licensees in the State of Michigan from purchasing, receiving, possessing or selling any beer manufactured in the State of Indiana.

13. That the ten states of the United States declared to be discriminatory by said regulation of December 14, 1937, above referred to, are the states of Indiana, Maine, Maryland, Nevada, New Hampshire, North Carolina, Pennsylvania, Tennessee, Washington and Vermont, That the remaining states of the Union, and including Illinois, Kentucky, Mississippi, New York, Ohio, and Wisconsin, have not been declared to be discriminatory within the provisions of said Section 40 and that said Liquor Control Commission of the State of Michigan does not have any intent so to designate them, and that as a result thereof, the manufacturers of such states which have not been declared to be [fol. 94] discriminatory, will be free to continue to import and sell within the State of Michigan the alcoholic malt beverages and beer manufactured by them.

14. That during the first nine calendar months in the calendar year of 1937 there were in all 603,241 barrels of beer produced outside of and imported *and* into the State of Michigan and that during the first ten calendar months of said calendar year of 1937 there were imported into the

State of Michigan 145,250 barrels of beer produced in the State of Indiana. That substantially all of said 603,241 barrels of beer imported into the State of Michigan during the said nine months above referred to, except the portion imported from the State of Indiana, were produced in, and shipped from, the States of Illinois, Missouri, Ohio and Wisconsin, which have not been designated as discriminatory states and that substantially no part of said beer produced outside of the State of Michigan and imported into the State of Michigan for sale therein during the said period of nine months was produced in, or shipped from the States of Maine, Maryland, Nevada, New Hampshire, North Carolina, Pennsylvania, Tennessee and Washington, which were designated as discriminatory states by said regulation of December 14, 1937, and none whatsoever from the State of Vermont, which was so designated as a discriminatory state in said regulation of December 14, 1937.

15. That the allegations of the bill of complaint as amended and the supplemental bill of complaint as amended, together with the exhibits thereto and the facts as contained in the affidavits of Carl A. Frey and of Harold Feightner, introduced as evidence at the hearing so far as the same may be necessary to the decision of the questions before the Court, are true.

[fol. 95] Upon the foregoing findings of fact the Court now makes and enters its conclusions of law as follows:

Conclusions of Law

1. That there exists in this suit the requisite amount in controversy and the diversity of citizenship to give jurisdiction; that the questions herein arise under the Constitution of the United States; that this Court has jurisdiction hereof, and that the jurisdiction of this Court in Equity is properly invoked.

2. That Section 40 of Act No. 281 of the Public Acts of the State of Michigan for the year 1937 is constitutionally valid and does not violate the Constitution of the United States or any provision thereof.

3. That the equity is with the defendants.

4. That the interlocutory injunction should be denied.

5. That a hearing upon the merits of the case will add nothing to the applicable facts and that this cause should be dismissed.

It is, Therefore, Considered, Ordered, Adjudged and Decreed by the Court that the plaintiff be denied an interlocutory injunction against the said defendants and each of them and that this cause be finally dismissed and that the defendants and each of them recover their costs of and from the plaintiff.

It is Further Ordered that the plaintiff have its exceptions to the order of the Court denying such interlocutory injunction and to said order of final dismissal.

Dated at Detroit, Michigan this — day of February, 1938.

—— ——, United States Circuit Judge, —— ——, United States District Judge, —— ——, United States District Judge.

[File endorsement omitted.]

[fol. 96] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S PROPOSED 'SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER EQUITY RULE 70½'—Filed February 28, 1938

The defendants herein, by Raymond W. Starr, Attorney General, Edmund E. Shepherd, and Andrew DeMaggio, assistants attorney general, interpose the following objections to plaintiff's proposed 'Special Findings of Fact and Conclusions of Law under Equity Rule 70½,' and offer a proposed substitute order:

1. Equity Rule 70½ provides:

"In deciding suits in equity, including those required to be heard before three judges, the court of first instance shall find the facts specially and state separately its con-
[fol. 97] clusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rules 75 and 76."

Obviously, this rule applies to those causes in which issues of fact are involved, and conflicting testimony taken.

It does not seem to apply to issues of law raised by motion to dismiss in the nature of demurrer.

2. The facts set forth in plaintiff's bill of complaint, as amended and supplemented, are admitted to be true for the purpose of passing upon defendants' motion to dismiss, while the court's opinion concisely states the facts, and its conclusions of law thereon, with sufficient clarity to present all questions on appeal.

While in one case, L. & N. R. Co. v. United States, 10 Fed. Supp. 185, to the effect that the rule is imperative, and applies to a suit where no evidence is offered by either side, it has been held on several occasions that the opinion of the court, when clear and concise, may stand as the findings of fact and conclusions of law required by Equity Rule 70½. Briggs v. United States, 45 F (2d) 479; Lewys v. O'Neil, 49 F (2d) 603; American Can Co. v. M. J. B. Co., 52 F (2d) 904; Parker v. St. Sure, 53 F (2d) 706; Bradt v. Kelsey-Hayes Wheel Corp., (D. C. Mich.), 14 Fed. Supp. 709; Moesta v. Briggs Mfg. Co., (D. C. Mich.), 16 Fed. Supp. 596.

3. By its recitals, plaintiff's proposed findings of fact under Equity Rule 70½ would lead an appellate court to [fol. 98] believe that issues of fact involved in this suit had been determined upon consideration of 'evidence introduced' at the hearing.

4. No evidence was introduced upon the hearing of this cause, no questions of fact were presented, and plaintiff's proposed 'findings of facts' leads to false impressions in that regard.

5. The defendants' proposed substitute order denying interlocutory injunction and dismissing the bill of complaint, as supplemented and amended, refers to this court's decision and opinion, and by reference, incorporates it therein.

Raymond W. Starr, Attorney General. Edmund E. Shepherd, Andrew DeMaggio, Assistants Attorney General.

[File endorsement omitted.]

[fol. 99] In United States District Court for the Eastern District of Michigan, Southern Division

In Equity. No. 8269

Indianapolis Brewing Company, Inc., an Indiana Corporation, Plaintiff,

vs.

The Liquor Control Commission of the State of Michigan Edward W. McFarland, Hale G. Knight, and Verold F. Gormely, Individually and as Members of the Liquor Control Commission of the State of Michigan; Frank Murphy and Leon D. Case, Individually and as Members Ex-officio of the Liquor Control Commission of the State of Michigan, Raymond W. Starr, Individually and as Attorney General of the State of Michigan, Defendants.

Order Denying Interlocutory Injunction, and Dismissing Bill of Complaint, as Supplemented and Amended

At a session of said court held at the City of Detroit, Eastern District of Michigan, Southern Division, on the 5th day of March, A. D. 1938, before the Honorable Charles C. Simons, Circuit Judge, and the Honorable Edward J. Moinet, District Judge, and the Honorable Ernest A. O'Brien, District Judge, presiding in this cause pursuant to Section 266 of the Judicial Code, as amended (Title 28 U. S. C. A., § 380).

This cause having come on to be heard upon plaintiff's petition for an interlocutory injunction as prayed in its bill of complaint, as amended and supplemented, and upon de- [fol. 100] fendants' motion to dismiss said bill, and the court having heard the arguments given and the authorities submitted by the attorneys for the respective parties; and the said judges having made and filed their decision that said interlocutory injunction should be denied, and that the bill should be dismissed upon the several grounds set forth in said decision;

Now, therefore, it is hereby ordered that said interlocutory injunction be denied, and that said bill of complaint, as amended and supplemented, be and is hereby dismissed, with costs to the defendants, for the reason that the Michigan statute assailed in said bill (Section 40, Act No. 8, Pub-

lic Acts 1933, Extra Session, as amended by Act No. 281, Public Acts 1937) is constitutionally valid as against the objections raised, there being no other ground upon which relief is sought.

It is further ordered that the decision and opinion of said judges shall be considered as incorporated in this order.

Edward J. Moinet, Judge.

Raymond W. Starr, Attorney General, Edmund E. Shepherd, Andrew DeMaggio, Assistant Attorney General, Attorneys for Defendants.

[fol. 101] In United States District Court

[Title omitted]

Order Denying Motion for Special Findings of Fact and Conclusions of Law

This cause is now before the court upon a petition requesting special findings of fact and conclusions of law, and it appearing that there are no issues of fact presented since no answer has been filed and no evidence received, and since in our opinion heretofore filed we have made the general finding that we accept the facts as stated in the bill of complaint and amendments and the affidavits attached thereto, and have made therein such detailed findings as bear upon the legal and constitutional issues, and since our conclusions of law are with sufficient particularity set forth in said opinion,

The petition for special findings of fact and conclusions of law is hereby denied.

(Signed) Charles C. Simons, United States Circuit Judge. (Signed) Edward J. Moinet, United States District Judge. (Signed) Ernest A. O'Brien, United States District Judge.

Detroit, Michigan, March 5th, 1938.

[fol. 102] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S ASSIGNMENTS OF ERROR—Filed April 27, 1938

Indianapolis Brewing Company, Inc., plaintiff herein, comes now by counsel and, in connection with its petition for appeal, files the following assignments of error on which it will rely in its appeal to the Supreme Court of the United States from the final order or decree of the District Court, herein, dated and entered on the 5th day of March, 1938.

The Court erred:

1. In dismissing the bill of complaint.

2. In denying the interlocutory injunction applied for by plaintiff against the enforcement of amended Section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933 of the State of Michigan and the regulation of the Liquor Con-
[fol. 103] trol Commission of the State of Michigan adopted pursuant thereto on the 14th day of December, 1937, and each of them by the said defendants and each of them.

3. In holding and decreeing that the State of Michigan had power under the Second Section of the Twenty-First Amendment of the Constitution of the United States to enact Act Number 281 of the Public Acts of that State for the year 1937 amending Section 40 of Act Number 8 of the Public Acts of the Extra Session of 1933 of the State of Michigan, and under the authority thereof, to adopt the regulation of the Liquor Control Commission dated December 14, 1937.

4. In holding and decreeing that Act Number 281 of the Public Acts of Michigan for 1937 amending Section 40 of Act Number 8 of the Public Acts of the Extra Session of 1933 of that State, and the regulation of the Liquor Control Commission of the State of Michigan adopted December 14, 1937, under the authority thereof were each not repugnant to the Commerce Clause of the Constitution of the United States, namely, Section 8 of Article I thereof.

5. In holding and decreeing that said Act Number 281 amending said Section 40 and the regulation of the Liquor Control Commission of Michigan adopted December 14,

1937, pursuant thereto, did not each violate the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

6. In holding and decreeing that the appellant was not denied the equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States by reason of the enactment of said Section 40 amended as aforesaid, and of said regulation adopted pursuant thereto.

7. In holding and decreeing that the State of Michigan had the power under the Second Clause of the Twenty-First [fol. 104] Amendment of the Constitution of the United States, without violating the provisions of the Commerce Clause and the Equal Protection and Due Process Clauses of the Fourteenth Amendment of said Constitution, to enact Act Number 281 of the Public Acts of Michigan for 1937 amending Section 40 of Act Number 8 of the Public Acts of the Extra Session of the year 1933 and to adopt said regulation of said Liquor Control Commission.

8. The District Court erred in holding and decreeing that the Twenty-First Amendment to the Constitution of the United States dispenses with the application and operation of the Commerce Clause of the Constitution of the United States and the Fourteenth Amendment thereof in respect to said amended Section 40 notwithstanding that the sole object and purpose of said Section was to promote the sale of beer produced in Michigan throughout other States of the Union through economic retaliation.

Wherefore, the plaintiff prays that the order and decree of the District Court, as dated and entered on the 5th day of March, 1938, dismissing plaintiff's bill of complaint, as amended and supplemented, and denying plaintiff's prayer for an interlocutory injunction, be reversed and set aside, and that it be granted relief as prayed for in its said bill of complaint, as amended and supplemented.

Harris W. Wienner, Thomas F. O'Mara, Herbert J. Patrick, Attorneys and Solicitors for Plaintiff.

[File endorsement omitted.]

[fol. 105] IN UNITED STATES DISTRICT COURT

[Title omitted.]

PLAINTIFF'S PETITION FOR APPEAL—Filed April 27, 1938

To The Honorable Edward J. Moinet, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division:

The Indianapolis Brewing Company, Inc., an Indiana Corporation, your petitioner herein, prays that it be allowed to take an appeal to the Supreme Court of the United States from the order of said District Court consisting of three judges in pursuance of Section 266 of the Judicial Code of the United States as amended, (Title 28 U. S. C. A. Section 380), denying the prayer of said plaintiff for an interlocutory injunction as prayed in plaintiff's bill of complaint as amended and supplemented in said cause and also from the final order and decree of said Court dismissing plaintiff's said bill of complaint, as [fol. 106] amended and supplemented, which order and decree of said District Court were entered in said cause on the 5th day of March, 1938, and prays that said appeal be allowed to the said plaintiff for the reasons specified in plaintiff's assignment of errors which is filed herewith.

That plaintiff considers himself aggrieved by said order and said decree made and entered in this cause by said Court and does hereby appeal from each of said order and decree to the Supreme Court of the United States.

Wherefore, this plaintiff prays that he be allowed to appeal to the Supreme Court of the United States from said order and decree and for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated be sent to the Supreme Court of the United States.

Dated this 27th day of April, 1938.

Harris W. Wienner, Thomas F. O'Mara, Herbert J. Patrick, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 107] IN UNITED STATES DISTRICT COURT

[Title omitted.]

ORDER ALLOWING APPEAL

The appellant in the above entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled cause by the District Court of the United States for the Eastern District of Michigan, Southern Division, on the 5th day of March, 1938, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided.

It is Now Here Ordered that an appeal be, and the same is, hereby allowed to the Supreme Court of the United [fol. 108] States from the District Court of the United States for the Eastern District of Michigan, Southern Division, in this cause, as provided by law, and it is further ordered that the Clerk of the said Court shall prepare and certify a transcript of the record, proceedings, and decree in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within Forty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $500.00.

Edward J. Moinet, District Judge in and for the District Court of the United States, Eastern District of Michigan.

Dated April 27th, 1938.

[fols. 109-139] Citation, in usual form, showing service on Raymond W. Starr, omitted in printing.

[fol. 140] IN UNITED STATES DISTRICT COURT

[Title omitted.]

Condensed Statement of Evidence

The evidence introduced and submitted to the Court in support of plaintiff's prayer for an interlocutory injunction at the time of the hearing of the application therefor on the 29th day of December, 1937, excepting the pertinent portions of the statutes of Michigan and of Indiana of which the Court took judicial notice and which are specially referred to in the pleadings, consisted of the following only:

1. The affidavit of Carl A. Frey, filed December 27, 1937;

2. The affidavit of Harold Feightner, filed December 27, 1937;

3. The plaintiff's bill of complaint, originally filed December 10, 1937 as amended and supplemented by the amendment thereto filed December 27, 1937 and the supplemental bill filed December 30, 1937.

[fol. 141] 4. The regulation of the Liquor Control Commission of the State of Michigan set out in Clause 3 of the plaintiff's supplemental bill of complaint as amended.

AFFIDAVIT OF CARL A. FREY

(1) In this affidavit Carl A. Frey deposed on oath and said: "That he is the Secretary and Treasurer and General Manager of Indianapolis Brewing Company, Inc., the plaintiff in the above entitled cause. That said Indianapolis Brewing Company, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, having its principal office and place of business in the City of Indianapolis, County of Marion, State of Indiana, and is a citizen and resident of said State, and is not a citizen or resident of the State of Michigan. That the said defendants and each of them are residents of the State of Michigan and that the said defendants Edward W. McFarland, Hale G. Knight and Verold F. Gormely, Frank Murphy and Leon D. Case constitute and compose the Liquor Control Commission of the State of Michigan, hereinafter sometimes referred to as the "Commission", which said Commission, under and pursuant to the laws of the

State of Michigan, is vested with the sole right, power and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within the State of Michigan, and is charged with the enforcement and administration of said laws and statutes.

That said Indianapolis Brewing Company, Inc., now is and has been continuously since the 1st day of January, 1935, duly authorized to conduct and has engaged in the business of the manufacture and sale of alcoholic malt beverages, and other lawful lines of business allied therewith in the State of Indiana, and now owns and operates, and since said last mentioned date has owned and operated, a plant in the State of Indiana wherein it manufactures and has continuously manufactured since said date, alcoholic malt beverages, which it has sold and is selling in many parts [fol. 142] of the United States where such sales are lawful, including the State of Michigan, in which said State its sales are and have been made at all times since said date to persons duly licensed by the above mentioned Liquor Control Commission in the State of Michigan. That prior to making any such sales to the various licensees authorized to purchase such alcoholic malt beverages from it in the State of Michigan, the said Indianapolis Brewing Company, Inc., procured from the Liquor Control Commission of the State of Michigan pursuant to and in accordance with the rules and regulations of said Commission a certain license or contract of license to sell beer and/or malt liquors to wholesale permittees licensed under and by said Commission, which said license or contract of license has been renewed by it from year to year and the last of which said renewals was issued on the 29th day of April, 1937, by said Liquor Control Commission of the State of Michigan and was Numbered 14, and by its terms authorized and empowered said Indianapolis Brewing Company, Inc., to sell beer and/or malt liquors to wholesale permittees of said Liquor Control Commission until the 1st day of May, 1938, unless cancelled, revoked or declared null and void by such Commission previous to such date. That a true and correct copy of said License Number 14 issued April 29, 1937, is attached to and made a part of this affidavit, marked Exhibit "A". That in connection with the issuance of said license of April 29, 1937, and such preceding licenses hereinbefore referred to, the said Indianapolis Brewing Com-

pany, Inc., paid to the Liquor Control Commission as an annual license fee for the same the sum of Five ($5.00) dollars in accordance with and pursuant to the regulations of said Commission. That since the 1st day of January, 1935, the said Indianapolis Brewing Company, Inc., has, pursuant to the right so granted to it by said Commission sold large quantities of its products to duly licensed wholesale permittees in the State of Michigan of the approximate value as follows:

[fol. 143] For the Year 1935	$44,654.85
For the Year 1936	44,838.91
For the first 10 months of the Year 1937	37,995.59
Total for Two Years and Ten Months	$127,489.35

That in making such sales to said wholesale permittees and licensees the said Indianapolis Brewing Company has at all times sold the same f.o.b. such permittees' place of business in the State of Michigan and has, in connection therewith, delivered the same by trucks owned by said plaintiff and operated by licensed truck drivers, except that such occasional shipments are made by common carrier, but that in each such case whether delivery is made by trucks of the plaintiff or by common carrier, the title to such alcoholic malt beverages passes to such permittee at the time of delivery at the place of business of such licensed permittee in the State of Michigan. Provided, further, That in the case of certain alcoholic malt beverages sold to West Shore Sales Corporation at Muskegon Heights, Michigan, a licensed wholesale permittee of said Commission in the State of Michigan, certain shipments of said alcoholic malt beverages have been, upon the order of said permittee, delivered direct to the warehouse of the Great Atlantic and Pacific Tea Company in Grand Rapids, Michigan, to an authorized representative of said West Shores Sales Corporation present at such warehouse at the time such deliveries are so made, at which time of deliveries the required revenue tax stamps of the State of Michigan are applied to the containers of such beverages.

That as a result of such sales so made by the plaintiff to said licensed wholesale permittees of the State of Michigan, there has been created in said State of Michigan a demand for the alcoholic malt beverages manufactured by the plaintiff and that as a result thereof, the value of the good will

and business so created in the State of Michigan for the alcoholic malt beverages of said plaintiff are worth at the present time an amount greatly in excess of Ten Thousand ($10,000.00) Dollars, to-wit: Fifty Thousand Dollars. That [fol. 144] the said business and goodwill so created and now existing in the State of Michigan has been acquired and created by this plaintiff by reason of the fine quality of its products and by the expenditure of money in advertising, solicitation and through other lawful means and that as a result thereof, a valuable sales and distribution system for the said products of the plaintiff has been built up and now exists in the State of Michigan.

That since the 21st day of July, 1937, the said Commission has repeatedly threatened to designate the State of Indiana as a discriminating state under and in accordance with the provisions of Section 40 of Act Number 8 of the Public Acts of the Extra Session of 1933 of the State of Michigan, as amended by Act Number 281 of the Public Acts of 1937 of the State of Michigan, by issuing and causing to be issued statements to the effect that the said State of Indiana was and is a state of discrimination as described in said Section 40 as amended and that said Liquor Control Commission of the State of Michigan proposed to and would adopt and issue a regulation so designating the State of Indiana unless the said State of Indiana so amended its laws as to remove therefrom such provisions as brought it within the classification of discriminating states as set out and described in said Section 40. That as a result of said statements so made by the members of said Commission, defendants herein, the various licensed wholesale permittees purchasing the said products of this plaintiff and their customers became apprehensive and fearful in connection with further purchases of alcoholic malt beverages from said plaintiff and, by reason of such apprehension and fear, have seriously considered the necessity of making other connections and arrangements for the purchase and sale of alcoholic malt beverages to be imported from states other than the State of Indiana and from manufacturers other than this plaintiff. That following the making of said threats the said Commission did on the 14th day of December, 1937, adopt a regulation designat- [fol. 145] ing the State of Indiana as a State of discrimination pursuant to the provisions of said Section 40 as amended and, as a result thereof, unless restrained and enjoined from enforcing the provisions of said regulation, the

importation, sale and possession of the alcoholic malt products of this plaintiff will become unlawful in the State of Michigan on and after the 14th day of March, 1938. That a true and complete copy of said regulation so adopted is attached hereto and made a part of this affidavit, marked Exhibit "B". That as a result of the adoption of said regulation, this plaintiff is now suffering in the loss of business and good will so produced and created by it as hereinbefore set out and will continue to increasingly suffer in the loss of such business and good will until the 14th day of March, 1938, at which time, by reason of said regulation, the further importation, sale and possession of its said alcoholic malt products will be entirely forbidden in the State of Michigan. That pending the final taking effect of said regulation on the 14th day of March, 1938, the said wholesale licensed permittees heretofore and now importing, selling and distributing the alcoholic malt beverages of this plaintiff, will continuously reduce the amount of their purchases and stock on hand of the said products of this plaintiff in order to be entirely free of any stock on hand by the said effective date of March 14, 1938 and, in like manner, the distributees and customers of said licensed wholesale permittees of this plaintiff will in like manner reduce their purchases and stock on hand of the alcoholic malt beverages produced by this plaintiff so as to be entirely clear of any such stock on hand on such effective date, as a result of which said plaintiff will entirely lose its said business, business connections and good will in the State of Michigan as a result of the adoption of said regulation of December 14, 1938, and will be damaged thereby in an amount far in excess of the sum of Ten Thousand ($10,000.00) Dollars, as hereinbefore set out, and being the actual value at the present time of the said business, and good will of said Indianapolis Brewing Company, Inc."

[fol. 146] (This affidavit was duly subscribed and sworn to before a competent Notary Public.)

AFFIDAVIT OF HAROLD FEIGHTNER

(2) In this affidavit Harold Feightner deposed on oath and said:

"That he is now and has been for about four years last past continuously Executive Secretary of The Indiana Brewers Association and in said position is his duty to familiarize himself with, compare, examine and compute

statistics relating to breweries and their products within the State of Indiana and within other states of the Union, and in the course of the execution of his said duties he has from time to time read, examined, and compared statistics published by the Government of the United States, those reported in various reports of the officers of the different states in the course of their official duties and with statistics prepared and published in alcoholic trade journals commonly accepted and acted upon by persons engaged in the manufacture, sale and distribution of alcoholic malt products including beer, that he has from said experience become competent and skilled in collecting and preparing statistics such as are herein set out:

That he has examined documents pertaining and bearing upon the facts and statistics herein set out, and had derived said statistics from the said reliable, official or said accepted sources.

That the number of licensed breweries and the amount of beer by them produced in the following named states during the fiscal year ending June 30, 1937, are now set out in the following table, to-wit:

[fol. 147]

State	Number of Breweries	Barrels
Indiana	17	2,254,490
Maryland	12	1,338,893
Nevada	2	21,388
New Hampshire	1	58,824
North Carolina	1	82,293
Pennsylvania	109	6,614,907
Tennessee	3	155,952
Washington	17	915,391
Vermont	0	0

That in the fiscal year ending June 30, 1937, beer was produced in respective states named below by the number of breweries and in the amounts now set out:

State	Number of Breweries	Barrels
Illinois	62	4,059,423
Kentucky	7	986,039
Missouri	20	3,442,809
New York	69	9,230,725
Ohio	55	4,281,448
Wisconsin	86	6,448,420

That during the first nine calendar months in the calendar year 1937 there were in all 603,241 barrels of beer produced outside of and imported into the State of Michigan. During the first ten calendar months in the calendar year 1937 there were imported into the State of Michigan 145,250 barrels of beer produced in the State of Indiana. That substantially all of said 603,241 barrels of said beer imported into the State of Michigan during the said nine months excepting the portion imported from the State of Indiana, were produced and shipped from the states of Illinois, Missouri, Ohio and Wisconsin and substantially no part of said beer produced outside of the State of Michigan and imported into the State of Michigan for sale therein during the said period of nine months was produced or shipped from the States of Maryland, Nevada, New Hampshire, North Carolina, Pennsylvania, Tennessee and Washington and none whatsoever from the State of Vermont. And that during the same period the amount of beer imported into the State of Michigan which was produced in other states of the Union than Michigan amounted to about twenty per cent of the total amount of beer consumed in the State of Michigan. That in [fol. 148] the four state of Illinois, Missouri, Ohio and Wisconsin, which, as above alleged, produced and imported into the State of Michigan in excess of two-thirds of the total amount of beer imported into the State of Michigan during said period, are located the number of breweries as above set out which are capable of producing and importing into the State of Michigan far more beer in addition to that already being imported into the State of Michigan therefrom than was produced in the State of Indiana and shipped into the State of Michigan.

That in the said regulation adopted by said Liquor Control Commission of the State of Michigan on December 14, 1937, the states of Illinois, Missouri, Ohio and Wisconsin are not designated as states having laws containing the provisions which require under said legislation of the State of Michigan the exclusion of beer produced therein."

(This affidavit was duly subscribed and sworn to before a competent Notary Public.)

[fol. 149] Copy

In United States District Court

[Title omitted]

Comes now the plaintiff and appellant in the above entitled cause and lodges the accompanying condensed statement of evidence to be included in the record on appeal, in the office of the clerk of said court, pursuant to Rule 75, paragraph (b) of the Federal Equity Rules.

Harris W. Wienner, McHale, Arthur & Meyers, Thomas F. O'Mara, Herbert J. Patrick, Attorneys for Plaintiff and Appellant.

[fol. 150] In United States District Court

[Title omitted]

Order Approving Condensed Statement of Evidence

Now come the parties in the above entitled cause by counsel, and the plaintiff having heretofore on the 19th day of May, 1938 lodged in the office of the Clerk of the Court the condensed statement of evidence to be included in the record in this cause on appeal to the Supreme Court of the United States, and notice of such lodgment having been given to the defendants on said 19th day of May, 1938 that such plaintiff and appellant would, on the 31st day of May, 1938, at nine-thirty o'clock A. M., at the office of Honorable Edward J. Moinet, Judge of said Court, in the United States court house, at Detroit, Michigan, present the same to the said Court or Judge thereof, and then and there ask the Court or Judge to approve said statement in order that the same may be filed in the office of the Clerk of said Court and become a part of the record for the purpose of the appeal, and the Court, at said time and place, having examined said condensed statement of evidence to be included in the record on appeal, and having heard the parties with regard thereto, now finds that the said condensed statement of evidence is true, complete and properly prepared and that it contains all of the evidence material to a decision

of the points presented in the assignment of errors, and that the same should be approved:

[fols. 151-158] It is therefore hereby Ordered by the Court that the said condensed statement of evidence be and the same is hereby approved and the Clerk of the Court is directed to file the same and make the same a part of the record in this cause.

Dated at Detroit, Michigan, this 31st day of May, 1938.

Edward J. Moinet, Judge of the United States District Court.

OK as to form. George W. Heideman, Asst. Attorney General.

[fol. 159] In United States District Court

[Title omitted]

Præcipe for Transcript of Record—Filed May 19, 1938

You are hereby directed to prepare and certify for the purpose of appeal to the Supreme Court of the United States from the orders and decrees made and entered in said cause, which appeal has been heretofore allowed, the following papers, documents, entries and portions of record made and entered in said cause, to wit:

1. Plaintiff's bill of complaint filed in this cause on December 10, 1937.

2. Order of court to show cause returnable December 20, 1937 filed and entered December 10, 1937.

3. Plaintiff's supplemental bill of complaint filed on December 20, 1937.

4. Temporary restraining order issued by the court filed and entered December 20, 1937.

5. Amended bill of complaint and supplemental bill of complaint filed December 27, 1937.

6. Affidavits of Carl A. Frey and Harold C. Feightner.

7. Defendants' motion to dismiss filed December 29, 1937.

8. Order of court extending temporary restraining order for a period of ten (10) days filed and entered January 7, 1938.

9. Order of court extending temporary restraining order for period of ten (10) days filed and entered January 17, 1938.

10. Defendants' amended motion to dismiss filed January 17, 1938.

11. Affidavit of John D. Shea, filed January 17, 1938.

[fol. 160] 12. Order of court extending temporary restraining order filed and entered January 26, 1938.

13. Order book entry showing hearing before three judges on December 29, 1937.

14. Opinion of court filed on February 3, 1938.

15. Proposed special findings of fact and conclusions of law filed by plaintiff on February 23, 1938.

16. Order of court of February 23, 1938, setting same for hearing on February 28, 1938.

17. Defendants' objections to plaintiff's proposed special findings of fact and conclusions of law, filed February 28, 1938.

18. Order and decree of court denying interlocutory injunction and dismissing bill of complaint as supplemented and amended, filed and entered March 7, 1938.

19. Order of court denying motion for special findings of fact and conclusions of law, filed and entered March 7, 1938.

20. Plaintiff's assignments of error, filed April 27, 1938.

21. Plaintiff's petition for appeal filed April 27, 1938.

22. Plaintiff's cost bond on appeal filed and approved by court April 27, 1938.

23. Plaintiff's jurisdictional statement, filed with petition for appeal April 27, 1938.

24. Order of court allowing appeal, filed and entered April 27, 1938.

25. Citations on appeal and proof of service, filed April 30, 1938.

26. Notice under Rule 12, paragraph 2, and proof of service filed April 30, 1938.

27. The statement of the evidence in the cause as the same may hereafter be approved by the said court or judge thereof.

28. Any stipulation or stipulations of counsel which may be hereafter filed.

[fol. 161] You are further instructed to transmit to the clerk of the Supreme Court of the United States at Washington, D. C., certified transcript together with all original

papers and statements required under the rules of the Supreme Court of the United States to be transmitted in their original form.

Indianapolis Brewing Company, Appellant and Plaintiff, by Harris W. Wienner, McHale, Arthur & Myers, Thomas F. O'Mara, Herbert J. Patrick, Counsel and Attorneys for the Appellant.

[fol. 162] The undersigned counsel for defendants and appellees hereby acknowledge service of the above and foregoing præcipe this 19th day of May, 1938.

Raymond W. Starr, Atty. Gen. of State of Mich., by John T. Bresnahan, Asst. Atty. Gen., Attorneys for Defendants and Appellees.

[File endorsement omitted.]

[fol. 163] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 164] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF ENLARGEMENT

The above named plaintiff (appellant), Indianapolis Brewing Company, Inc., having duly requested by its verified petition that the time within which said plaintiff (appellant) may docket this cause upon appeal in the Supreme Court of the United States and file the record thereof with the Clerk of said Court, showing good cause why the same should be granted, the said petition is now hereby granted and; it is accordingly ordered that the time within which the Indianapolis Brewing Company, Inc., plaintiff (appellant) in the above entitled cause may cause its appeal in the above and foregoing cause and the record and proceedings therein and other records in connection therewith to be filed [fol. 165] in the office of the Clerk of the Supreme Court of

the United States, be and the same is hereby enlarged to and including June 18, 1938.

Edward J. Moinet, District Court Judge.

May 31st, 1938.

[fol. 166] [File endorsement omitted.]

[fol. 167] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation as to Printing Record—Filed June 18, 1938.

Now comes the appellant in the above entitled cause and for its statement of points to be relied upon, adopts its assignments of error.

Further complying with Paragraph 9 of Rule 13, appellant designates the following parts and portions of the record to be printed, which said parts and portions so designated are necessary for a full and fair consideration of the case, to-wit:

1. Bill of complaint as amended and supplemental bill of complaint.
2. Amended motion of defendants to dismiss.
3. Opinion of the Court.
4. Plaintiff's proposed special findings of fact and conclusions of law under Equity Rule 70½.

[fol. 168] 5. Defendants' objections to plaintiff's proposed special findings of fact and conclusions of law.

6. Order denying interlocutory injunction and dismissing bill of complaint as supplemented and amended.
7. Order denying motion for special findings of fact and conclusions of law.
8. Assignments of error.
9. Petition for appeal.
10. Order allowing appeal.
11. Citation.
12. Appellant's statement as to jurisdiction.
13. Statement of evidence and order approving same.
14. Order enlarging time for docketing record.
15. Praecipe for transcript of record.

16. Statement of points to be relied upon and designation as to printing record.

Harris W. Wienner, Frank M. McHale, Herbert J. Patrick, Thomas F. O'Mara, Attorneys for Appellant.

Service of the above points to be relied upon and designation as to printing record is acknowledged this 16th day of June, 1938.

Raymond W. Starr, Atty. Gen'l, State of Mich., by John T. Bresnahan, Asst. Attorney General of the State of Michigan, Counsel for Appellees.

[fol. 169] [File endorsement omitted.]

[fol. 170] IN SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION AS TO PRINTED RECORD—Filed June 22, 1938

Now come the appellees in the above entitled cause, and complying with paragraph 9 of Rule 13, designate the following additional parts and portions of the record to be printed, which said parts and portion so designated are necessary for a full and fair consideration of the case, to-wit:

1. Appellees' motion to affirm.

For Raymond W. Starr, Attorney General for the State of Michigan; Edmund E. Shepherd, Assistant Attorney General, for Appellees.

[fol. 171] STATE OF MICHIGAN,
County of Ingham, ss:

Horace Craig, being duly sworn, deposes and says that on the 20th day of June, A. D. 1938, he served a true copy of the foregoing appellees' designation as to printed record upon Harris W. Wienner, attorney for appellant, by placing the same in an envelope addressed as follows: Mr. Harris W. Wienner, Attorney at Law, 1177 Penobscot Building, Detroit, Michigan, by prepaying the full first-

class postage thereon, and by placing the same in the United States post office at Lansing, Michigan.

Horace Craig.

Subscribed and sworn to before me this 20th day of June, A. D. 1938. Margaret E. Parent, Notary Public, Ingham County, Michigan. My commission expires November 4, 1939.

[fol. 172] [File endorsement omitted.]

Endorsed on cover: File No. 42,615. E. Michigan, D. C. U. S. Term No. 130. Indianapolis Brewing Company, Inc., appellant, vs. The Liquor Control Commission of the State of Michigan, et al. Filed June 18, 1938. Term No. 130, O. T., 1938.